JOURNAL

OF

COMPARATIVE LEGISLATION

AND

INTERNATIONAL LAW

EDITED FOR

THE SOCIETY OF COMPARATIVE LEGISLATION

BY

SIR LYNDEN MACASSEY, K.B.E., K.C., LL.D.

AND

C. E. A. BEDWELL, ESQ.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ' ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—ARIST. *Pol.* II. 1.

THIRD SERIES. VOL. IV.
(COMPRISING NUMBERS I. AND IV.)

LONDON:
SOCIETY OF COMPARATIVE LEGISLATION,
1, ELM COURT, TEMPLE, E.C.4.
1922.

[*All rights reserved*]

All communications to be addressed to the Editors,
1, Elm Court, Temple, E.C.4.

The annual subscription to the Society is one guinea.

Printed in Great Britain by Hazell, Watson & Viney, Ld.,
London and Aylesbury.

CONTENTS OF VOL IV.

PAGE

INTERNATIONAL LABOUR LEGISLATION 1
Contributed by SIR LYNDEN MACASSEY, K.B.E., K.C.

THE POWERS OF COLONIAL LEGISLATURES 11
Contributed by PROFESSOR W. HARRISON MOORE, C.M.G.

THE HAGUE RULES, 1921 24
Contributed by C. R. DUNLOP, ESQ., K.C.

THE DEVELOPMENT OF NAVAL COURTS MARTIAL . . . 35
Contributed by SIR REGINALD ACLAND, K.C., Judge Advocate.

ADOPTION AMONG THE MAORIS OF NEW ZEALAND . . . 60
Contributed by F. O. V. ACHESON, LL.M., Judge of the Native Land Court and Native Appellate Court of New Zealand.

MANDATES 71
Contributed by PROFESSOR BERRIEDALE KEITH, D.C.L.

THE STUDY OF COMPARATIVE LAW IN FRANCE AND ENGLAND . 84
Contributed by PROFESSOR H. C. GUTTERIDGE.

THE COURT OF INTERNATIONAL JUSTICE 89
Contributed by WILLIAM LATEY, ESQ.

THE THEORY OF STATUTES 97
Contributed by WYNDHAM A. BEWES, ESQ.

AUSTRALIA AND THE PRIVY COUNCIL 137
Contributed by the HON. SIR JOSIAH H. SYMON, K.C.M.G., K.C.

PAGE

LEGAL TRAINING IN AMERICA 152
Contributed by EDWARD JENKS, ESQ., M.A., D.C.L.

THE RAILWAYS ACT, 1921 162
Contributed by SIR LYNDEN MACASSEY, K.B.E., K.C.

INTERNATIONAL CONDUCT DURING THE WORLD WAR . . . 176
Contributed by ARNOLD D. MCNAIR, ESQ.

THE CRIMINAL LAW AND THE CRIMINAL INSANE . . . 191
Contributed by DR. LETITIA FAIRFIELD.

THE CANADIAN CONSTITUTION AND COMPANY LEGISLATION . 201
Contributed by PROFESSOR BERRIEDALE KEITH, D.C.L.

TRIAL BY JURY 210
Contributed by MISS MONICA M. GEIKIE COBB.

THE JUDICIAL RECOGNITION OF CUSTOM IN INDIA . . . 218
Contributed by LINDESAY J. ROBERTSON, ESQ.

NOTES ON EGYPTIAN LAW 229
Contributed by SIR MALCOLM MCILWRAITH, K.C.M.G., K.C.

NOTES ON IMPERIAL CONSTITUTIONAL LAW 104
Contributed by PROFESSOR BERRIEDALE KEITH, D.C.L.

NOTES ON IMPERIAL CONSTITUTIONAL LAW 233
Contributed by PROFESSOR BERRIEDALE KEITH, D.C.L.

SOUTH AMERICAN NOTES 109
Contributed by WYNDHAM A. BEWES, ESQ.

INTERNATIONAL LABOUR LEGISLATION. NOTES AND REVIEWS . 242
Contributed by SIR LYNDEN MACASSEY, K.C.B., K.C.

PAGE

NOTES:

The Late Lord Bryce 113
Maintenance Orders (Facilities for Enforcement) Act, 1920 . 113
North Borneo Legislation 113
Sovereign Colonies 113
Comparative Public Law 115
Decisions of the Mixed Arbitral Tribunal 115
The Principles of Income Tax 116
American Journal of International Law 117
The Late Maître Edouard Clunet 249
Annuaire International de Législation Agricole, X^ème Année, 1920 250
Chile 251
The British Guiana Ordinance 252
Maintenance 253
Administration of Justice Act, 1920 253
Canadian Bar Association 254
Mixed Arbitral Tribunals 254

NOTICES OF BOOKS:

Collected Legal Papers of Oliver Wendell Holmes, one of the Justices of the Supreme Court of the United States. Lord Bryce 119
Works on International Law. James W. Garner . . . 120
Carr, Cecil, *Delegated Legislation.* Sir Courtenay P. Ilbert . 124
Taft, Henry W., *Occasional Papers and Addresses of an American Lawyer.* Lord Bryce 125
Falconbridge, J. D., *Handbook of the Law of Sale of Goods*; Aitkin, K.C., Henry, *The Principle of the Law of the Sale of Goods.* W. D. Chalmers 126
Buckland, W. W., *A Textbook of Roman Law from Augustus to Justinian.* Count Georges, *Droit Romain: aperçu historique Sommaire ad usum cupidæ legum inventutis.* G. R. Stirling Taylor 128
Gilchrist, R. N., *Principles of Political Science*; Right Hon. C. F. G. Masterman, *How England is Governed.* H. J. R. . 181
A History of the Peace Conference of Paris. D. P. H. . . 133
War and Treaty Legislation. R. F. Roxburgh . . . 134
Gilchrist, R. N., *Conciliation and Arbitration.* Sir Lynden Macassey 243
Montgomery, B. G. de, *British and Continental Labour Policy.* Sir Lynden Macassey 245

PAGE

NOTICES OF BOOKS (*continued*):

Oppenheim, L., *International Law*, vol. ii, "War and Neutrality." James W. Garner 257

The British Year Book of International Law. W. S. M. K. . 261

The International Law Association: Report of the Thirtieth Conference held at the Peace Palace, The Hague, 1921. W. S. M. K. 262

Hyde, W. Cheney, *International Law, chiefly as Interpreted and Applied by the United States.* Cyril M. Piccotto . . 263

Bentwich, N., *Westlake's Private International Law*; Holland, Sir T. Erskine, *Letters on War and Neutrality*; *Transactions of the Grotius Society.* C. M. P. 265

Dickinson, E. de Witt, *The Equality of States in International Law.* D. P. H. 266

Stone, Gilbert, *Laws and Regulations regarding Lead Poisoning in Various Countries.* Sir Thomas Oliver 267

Jenks, Edward, *A Digest of English Civil Law.* Henri L. Levy-Ullmann 269

Keith, A. Berriedale, *Dominion Home Rule in Practice.* A. G. . 271

The Legal Status of Women in Alberta. Monica M. Geikie Cobb 272

Plucknett, Theodore F. T., *Statutes and their Interpretation in the Fourteenth Century.* C. T. C. 274

JOURNAL

OF

COMPARATIVE LEGISLATION

AND

INTERNATIONAL LAW.

EDITED FOR

THE SOCIETY OF COMPARATIVE LEGISLATION

BY

SIR LYNDEN MACASSEY, K.B.E., K.C., LL.D.

AND

C. E. A. BEDWELL, ESQ.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—ARIST. *Pol.* II. 1.

THIRD SERIES. VOL. IV., PART I.

LONDON:

SOCIETY OF COMPARATIVE LEGISLATION,

1, ELM COURT, TEMPLE, E.C.4.

1922.

[*All rights reserved.*]

All communications to be addressed to the Editors,
1, Elm Court, Temple, E.C.4.

The annual subscription to the Society is one guinea.

The JOURNAL OF COMPARATIVE LEGISLATION *will in future be issued quarterly in February, May, August and November.*

Printed in Great Britain by Hazell, Watson & Viney, Ld., London and Aylesbury.

CONTENTS.

PAGE

1. INTERNATIONAL LABOUR LEGISLATION 1
   Contributed by SIR LYNDEN MACASSEY, K.B.E., K.C.

2. THE POWERS OF COLONIAL LEGISLATURES 11
   Contributed by PROFESSOR W. HARRISON MOORE, C.M.G.

3. THE HAGUE RULES, 1921 24
   Contributed by C. R. DUNLOP, ESQ., K.C.

4. THE DEVELOPMENT OF NAVAL COURTS MARTIAL . . . 35
   Contributed by SIR REGINALD ACLAND, K.C., Judge Advocate.

5. ADOPTION AMONG THE MAORIS OF NEW ZEALAND . . 60
   Contributed by F. O. V. ACHESON, LL.M., Judge of the Native Land Court and Native Appellate Court of New Zealand.

6. MANDATES. 71
   Contributed by PROFESSOR BERRIEDALE KEITH, D.C.L.

7. THE STUDY OF COMPARATIVE LAW IN FRANCE AND ENGLAND . 84
   Contributed by PROFESSOR H. C. GUTTERIDGE.

8. THE COURT OF INTERNATIONAL JUSTICE 89
   Contributed by WILLIAM LATEY, ESQ.

9. THE THEORY OF THE STATUTES 97
   Contributed by WYNDHAM A. BEWES, ESQ.

10. NOTES ON IMPERIAL CONSTITUTIONAL LAW . . . 104
    Contributed by PROFESSOR BERRIEDALE KEITH, D.C.L.

11. SOUTH AMERICAN NOTES 109
    Contributed by WYNDHAM A. BEWES, ESQ.

PAGE

12. NOTES:

The Late Lord Bryce 113
Maintenance Orders (Facilities for Enforcement) Act, 1920 113
North Borneo Legislation 113
Sovereign Colonies 113
Comparative Public Law 115
Decisions of the Mixed Arbitral Tribunal . . . 115
The Principles of Income Tax 116
American Journal of International Law . . . 117

13. NOTICES OF BOOKS:

Collected Legal Papers of Oliver Wendell Holmes, one of the Justices of the Supreme Court of the United States. Lord Bryce 119

Works on International Law. James W. Garner . . 120

Carr, Cecil, *Delegated Legislation.* Sir Courtenay P. Ilbert 124

Taft, Henry W., *Occasional Papers and Addresses of an American Lawyer.* Lord Bryce 125

Falconbridge, J. D., *Handbook of the Law of Sale of Goods*; Aitken, K. C., Henry, *The Principle of the Law of Sale of Goods.* M. D. Chalmers 126

Buckland, W. W., *A Textbook of Roman Law from Augustus to Justinian.* Cornil, Georges, *Droit Romain: aperçu historique sommaire ad usum cupidæ legum iuventutis.* G. R. Stirling Taylor 128

Gilchrist, R. N., *Principles of Political Science*; Right Hon. C. F. G. Masterman, *How England is Governed.* H. J. R. 131

A History of the Peace Conference of Paris. D. P. H. . 133

War and Treaty Legislation. R. F. Roxburgh . . 134

INTERNATIONAL LABOUR LEGISLATION.

[*Contributed by* Sir Lynden Macassey, K.B.E., K.C.]

The work of the International Labour Organisation is increasing rapidly in importance for those who follow the trend of Comparative Legislation, and, in view of the special provisions contained in the Peace Treaty for enforcement by the Permanent Court of International Justice of conventions and recommendations passed by the Organisation and adopted by countries which are parties to the Treaty, of growing interest to all concerned with International Law. It is hardly necessary to state that the Organisation was established by Part XIII of the Treaty of Versailles primarily to promote the international protection of workers by conventions agreed between member States, and so secure more just and humane conditions of labour than those which theretofore existed. As constituted by Article 388 of the Treaty the Organisation consists of a General Conference, convened at least once every year, of four representatives of each State which is a member of the League of Nations—two being delegates of the Government, one of the employers and one of the workpeople of, and in, that State—and an International Labour Office at Geneva controlled by a Governing Body elected by the Conference. The first Conference took place in Washington in October 1919; what may be called the second was held at Genoa in June 1920, and the third in Geneva in October last. At this latter Conference a lengthy report, dated October 23, 1921, was presented by M. Albert Thomas, the distinguished Director of the International Labour Office, entitled "League of Nations—International Labour Conference—Third Session—Geneva 1921—Report of the Director." It is obtainable from the International Labour Office, describes the work up to that date of the Organisation, and is destined to be a historical document.

Great as the success of the office has been in promoting measures for uniform international labour legislation, all of which are recorded, the chief importance of the Report from the standpoint of Comparative Law arises from the exhaustive details contained in it of

the action which the countries, parties to the League of Nations, have taken to accept and carry those measures into effect, and from the sidelights it throws upon constitutional practice in those countries.

The provisions of the Peace Treaty are now so well-known to readers of this journal that it would be superfluous to do more than remind them that by Article 405 the Conference may frame its proposal in regard to any question of proposed international legislation in one of two forms: either as a recommendation of principle to be submitted to the member States for consideration with a view to effect being given to it by national legislation, administrative action or otherwise, or as a draft convention for ratification by the member States. If a draft convention or a recommendation is passed by a two-thirds majority of the votes of the delegates present at the Conference, readers will remember that it is deemed to be adopted by the Conference, and that each member State is then bound under ordinary circumstances, within a year from the conclusion of the Conference, or, in exceptional circumstances within eighteen months, to submit any recommendation or draft convention so adopted to " the authority or authorities within whose competence the matter lies for the enactment of legislation or for other action." If, on such submission, the authority or authorities decline to give effect to a recommendation or to ratify a draft convention, the member State is free from all further obligations. Should, however, any member State fail to effect such submission, any other member State may refer the matter to the Permanent Court of International Justice.

Interesting questions of Constitutional Law or, perhaps, more properly speaking, constitutional practice, have arisen in regard to the meaning and effect of the words in Article 405 of the Peace Treaty, namely, what is " the authority or authorities within whose competence the matter lies for the enactment of legislation or other action," and what procedure Article 405 intends should be followed by member States in regard to ratification. The original draft of the Article contemplated conventions only and not recommendations, and proposed that any draft convention adopted by the Conference by a two-thirds majority must be ratified by every member State unless within one year the National Legislature of that State should have expressed its disapproval of the draft convention. Shortly after the preparation of this draft, a Commission on International Labour Legislation was appointed by the Peace Conference on January 31, 1919, to consider the draft and settle it as

Part XIII of the Treaty. There was considerable divergence of views on this Commission as to what the provisions of Article 405 should be, some countries taking the view that States should be laid under a specific treaty obligation to ratify conventions adopted by the Conference, whether their legislative authorities approved them or not, subject to a right of appeal to the Executive Council of the League of Nations; other countries, notably the United States of America, objecting to any obligation whatsoever to ratify being put upon a member State. Article 405 in its present form represents a compromise arrived at by a Sub-Committee of the Commission consisting of representatives of the American, British, and Belgian delegations, especially appointed by the Commission to find an acceptable solution of the difficulty. The report of the Commission dated March 24, 1919, in referring to Article 405, contains this passage:

"The majority of the Commission therefore decided in favour of making ratification of a convention subject to the approval of the national legislatures or other competent authorities."

It would seem from the report that the Commission was under the impression that all draft conventions adopted by the Conference, as well as all recommendations passed by the Conference for legislation in member States, provision for which was inserted by the Commission in Article 405, would be submitted to the national legislatures of member States in countries where parliaments existed.

So far as Great Britain was concerned, a discussion took place in the House of Commons on May 27, 1921, as to who was "the authority or authorities within whose competence the matter lies for the enactment of legislation, or other action." In the course of the debate reference was made to the instructions of the British War Cabinet dated March 14, 1919, to the delegates representing Great Britain at the Peace Conference. These instructions contained, inter alia, the following passage:

"The Conference was not merely an assembly for the purpose of passing resolutions, but would draw up draft conventions which the States would have to present to their legislative authorities."

The contention was raised that where legislation was required, conventions and recommendations adopted by the International Labour Office should, in accordance with Article 405, be submitted to Parliament as "the authority . . . within whose competence

the matter lies for the enactment of legislation." The learned Attorney-General stated the view of the Government to be that the printing and circulation of the draft conventions and recommendations of the International Labour Conferences in the form of a Parliamentary paper was a sufficient submission to Parliament, if any submission to Parliament was really required by Article 405, but that the authority in Great Britain which decides whether a convention is to be ratified or not is not Parliament, but the Crown acting on the advice of the Ministers of the Crown, and that it was also for the Government to decide whether they would or would not adopt any of the recommendations passed by the Conference, in which event they would submit to Parliament such only of the recommendations as they desired to incorporate in a legislative measure.

The position under the constitutional system in Great Britain would be a curious one, if the Government were bound to submit to Parliament in the shape of a Bill for an enabling or enforcing Act of Parliament, a draft convention or recommendation which the Government delegates had voted against at the Conference, or one to which the Cabinet objected on principles of policy.

In other member States than Great Britain considerable difficulties have arisen in regard to the mode of ratification and by reason of the inability of Governments to give effect to the procedure apparently contemplated by Article 405, of submitting conventions to their national legislatures for legislative action where such bodies existed. In France the constitutional practice is for the Government to request Parliamentary authorisation for the ratification of treaties or conventions only when they have been signed by the plenipotentiaries of France and the other States concerned, and are from the diplomatic point of view concluded agreements. After the Washington International Labour Conference the French Government introduced into the Chamber of Deputies on April 29, 1920, a number of Bills authorising ratification of five of the Washington Conventions, but later came to the conclusion it was unable to proceed in that method inasmuch as the draft conventions had merely been adopted by a two-thirds majority of the International Labour Conference and were not concluded conventions regularly signed by plenipotentiaries. To obviate this objection, the French Government proceeded to convert the draft conventions into concluded conventions, suitable for submission to the Chamber of Deputies, by embodying them in treaties or conventions signed by French plenipotentiaries and also

by those of other member States. The Belgian Government likewise inclined to the view that this was the proper procedure for Belgium. Accordingly, six diplomatic conventions were drafted by the French Government containing the text of the six draft Conventions of Washington and were signed at Paris on January 24, 1921, by French and Belgian plenipotentiaries, and a protocol was opened for the subsequent adherence to these conventions by other States. The propriety of this mode of procedure was referred by the Secretary-General of the League of Nations to the International Labour Office, and the latter took the view that the procedure which the French Government had instituted was contrary to Part XIII of the Treaty, and that member States, in adhering to the Treaty, had bound themselves to follow the procedure prescribed by Article 405, which the Office submitted was complete in itself and intended to supersede, so far as conventions adopted by the International Labour Conference were concerned, any contrary form of procedure existing in such States for the ratification of international conventions. The argument of the International Labour Office seems to be one of force and weight. It urges that the characteristic feature of the procedure—namely, the absence of signatures—was an inevitable corollary to the whole scheme of organisation set up by Part XIII of the Treaty. The method proposed to be followed by the French Government would result, the Office pointed out, in differentiating profoundly between the position of the Government delegates and that of the employers' and workers' delegates at the Conference, which would be contrary to the spirit of the labour provisions of the Treaty, and indeed to its express provisions. It would, moreover, involve the paradox of obliging a Government, the delegates of which had opposed at a Conference the adoption of a draft convention, nevertheless to cause that convention to be signed by plenipotentiaries in order that it might be submitted to the competent authority!

The Secretariat of the League of Nations and its legal advisers took the same view as the International Labour Office, and the Secretary-General replied to the French Government to that effect. At the moment the position is that, if a Government of a member State in the position of the French Government finds that constitutional difficulties prevent the direct presentation to the legislature of draft conventions merely adopted by a vote of the International Labour Conference, it can open a protocol with member States in the same position, but the League of Nations cannot and will not do so. This is clearly an unsatisfactory position. Where such constitu-

tional difficulties exist in regard to the procedure of ratification, that condition of things should, if possible, be considered at an early date by the League of Nations, with a view to uniform procedure being adopted in harmony with the scheme of the Treaty of Peace.

A further question has emerged in regard to the time of ratification. If a member State adheres to a convention, that involves two things, first, ratification after, in most cases, the authorisation of Parliament has first been sought and given, and, secondly, revision and amendment of existing national legislation touching the subject-matter of the convention so as to bring it into accord with the provisions of the convention. The amendment of existing legislation that is involved may be very considerable and far-reaching, and member States have to ask themselves this question: Should the act of ratification precede the legislative changes or should the latter be effected before ratification? Putting the same question in another form, should member States place themselves under international obligations to other member States to reform home industrial conditions until they have ascertained whether public opinion in their own country will permit them to effect the necessary modifications of their existing national laws to remedy those conditions? The view of the International Labour Office on this increasingly important and essentially practical question is that domestic legislation should be first brought into consonance with the convention, and that when that reform is effected there should follow the formal ratification of the convention. That would seem unquestionably—apart from the delay—to be the right procedure, otherwise member States may find themselves in the position of having ratified a convention and then being unable to give full effect to it, which in itself would be a breach of the Treaty. In such circumstances it is extremely doubtful what view the Permanent Court of International Justice could or ought to take. The Court would really not be dealing with a legal issue, but would in practice be placed in the position of having to consider what it could or would have done if it had been acting in the place of the Government of the defendant member State, and responsible for the legislation and administration of the country in question—an impossible position.

There is another matter of importance which is arising in connection with ratification. The official languages of the Organisation are French and English, and many member States, when approaching consideration of the question whether they will or will not ratify a convention, desire to know the full intention of terms and phrases

in the conventions. To obtain such a decision may well be essential before they can decide in what particular respect or to what extent they will be called upon to amend their own domestic legislation. There is no effective procedure provided in the Peace Treaty for giving " interpretations " on international labour conventions under those circumstances, though anyone conversant with labour legislation, and especially with labour agreements, knows how the whole peace and harmony in an industry may turn upon some subtle shade of meaning intended by the parties to be attributed to an industrial word or phrase. The International Labour Office has no authority and does not claim to exercise any right to give " interpretations " of conventions to member States who ask for them. What it very properly does is to refer the member State which desires an " interpretation " to the way in which the convention is being carried out in other countries where it has been applied, or to the condition of things in a member State where there was already in existence before the convention what is prescribed by the convention. At the same time the office makes the fullest reservations as to the authority of any opinions expressed or implied in such an answer. Here again there is need for some amendment in the constitution and procedure of the International Labour Organisation which will enable authoritative " interpretations " to be given of conventions and, indeed, of recommendations. The necessity for this will grow rapidly as conventions hasten to come up for ratification by member States, or recommendations for incorporation in domestic Acts of Parliament. Experience in most organised industries in Great Britain, where working rules have been adopted by agreement between employers and employed, has shown the urgency for the existence of an authoritative and experienced tribunal to give decisions from time to time as to the intention of the rules. International labour conventions stand equally in need of a similar tribunal; and such interpretation, if we may call it that, is really not a suitable matter for a purely judicial decision.

Anything approaching relative uniformity in the industrial codes or industrial administrations of different countries seemed, before the establishment of the International Labour Organisation, to be an impracticable ideal. How great is the measure of uniformity that is being now achieved can best be appreciated by reference to the actual provisions of the draft conventions and recommendations adopted by the three International Labour Conferences at Washington, Genoa, and Geneva. These should be read in full—either in the

English version from the three booklets issued by the British Ministry of Labour and published by the British Stationery Office, or in the French and English versions as published together by the International Labour Office in Geneva. We can only say in passing that at Washington draft conventions were adopted in respect of (1) an 8-hour day and a 48-hour week; (2) unemployment; (3) the employment of women before and after child-birth; (4) the employment of women during the night; (5) the minimum age for admission of children to industrial employment; (6) the night work of young persons employed in industry; and recommendations in respect of (1) unemployment; (2) reciprocity of treatment of foreign workers; (3) prevention of anthrax; (4) protection of women and children against lead poisoning; (5) establishment of Government health services; (6) application of the Berne Convention of 1906 prohibiting the use of white phosphorus in the manufacture of matches. At Genoa, draft conventions were adopted in regard to (1) the minimum age for admission of children to employment at sea; (2) unemployment indemnity in case of loss or foundering of the ship; (3) establishment of facilities for finding employment for seamen, and recommendations concerning (1) hours of work in the fishing industry and in inland navigation; (2) the establishment of national seamen's codes; and (3) unemployment insurance for seamen.

After securing adoption by the Conference of conventions or recommendations, the next important matter is the extent to which member States ratify those conventions and accept the recommendations. Great Britain so far has formally ratified the Washington conventions in regard to unemployment; the employment of women during the night; the minimum age for admission of children to industrial employment, and the night work of young persons employed in industry, and also the Genoa conventions in regard to the minimum age for admission of children to employment at sea. These were either covered by existing British legislation and administrative practice, or were expressly put into force by the Women, Young Persons and Children (Employment) Act of 1920. The British Government refused to ratify the Washington convention in respect of the 8-hour day and 48-hour week because the rigid terms in which that convention was drawn would have conflicted with agreements concluded between the Government and the railwaymen in regard to hours of work and also with important collective agreements between employers and employed in other industries. The British

Government also refused to ratify the Washington convention in regard to the employment of women before and after child-birth, because again the inelasticity of the provisions would have cut across the administrative practice under the Factory and Insurance Acts, and thereby occasioned very considerable dislocation of a code of law which, although requiring some amendment, it could hardly be said needed to be entirely superseded by a different régime.

On pages 48–53 of the Report of the Director of the International Labour Office, to which reference has already been made, several illuminating tables are printed showing the action taken by different member States to give effect to the conventions and recommendations of the Washington and Genoa Conferences. If, for example, we take the Washington convention in regard to hours of work, it will be seen that Czecho-Slovakia, Greece, India, and Roumania have ratified that convention ; and that the Governments of Argentine, Austria, Belgium, Brazil, France, Germany, Poland, and Spain have recommended to their respective legislatures its ratification, and have taken steps to submit the necessary Bills to their Parliaments for that purpose. When one comes to consider the cases in which the convention has been actually put into operation, we find that Belgium and the Province of British Columbia in Canada have passed Acts of Parliament enforcing the provisions of the convention, and that the Governments of Argentine, Chili, Denmark, Germany, India, Italy, and Luxemburg have deposited in their various legislatures or governing bodies Bills for Acts to apply those provisions. Further, we find that the Government of South Africa at present is engaged in drawing up such a Bill.

Each one of the Washington and Genoa conventions and recommendations is treated in M. Thomas's report in a similarly comparative way, and in the text of the document very full explanations are given of the constitutional and industrial circumstances in each country affecting its ratification or its application. These tables show conclusively the success which in the first three years of its existence has already attended the efforts and operations of the International Labour Organisation.

We can summarise the position by stating that the decisions adopted at the Conference at Washington have led to the adoption of 40 acts or other legislative measures, 32 of which are concerned with the draft conventions and 8 with the recommendations ; and to the preparation of 101 Bills, 80 dealing with draft conventions and 21 with recommendations. The decisions of the Genoa Conference

have led already to 3 Acts of Parliament relating to conventions and to the preparation of 23 Bills, 12 of which deal with conventions and 11 with the recommendations. Two of the Washington conventions, the one relating to the hours of labour and the other to unemployment, came into force on July 1, 1921; the other four Washington conventions and the three Genoa conventions will come into force on July 1, 1922.

The machinery provided by the Peace Treaty for dealing with member States who neglect or refuse to submit the draft conventions and recommendations to the competent authority, or which, having ratified the conventions or adopted the recommendations, refrain from putting them into active operation by Act of Parliament, administrative order or otherwise, is delicate in the extreme. It involves a certain measure of control by the International Labour Office, or it may be the Permanent Court of International Justice, of the domestic industrial affairs of member States, and raises interesting questions of constitutional procedure and international law. Those questions must, however, await discussion on some future date.

THE POWERS OF COLONIAL LEGISLATURES.

[*Contributed by* PROFESSOR W. HARRISON MOORE, C.M.G.]

IN the recent case of the Initiative and Referendum Act (1919), A.C. 935, 945, the Judicial Committee of the Privy Council, speaking through Lord Haldane, says:

> S. 92 of the (British North America) Act, 1867, entrusts the legislative power in a Province to its Legislature, and to that Legislature only. No doubt a body with a power of legislation on the subjects entrusted to it so ample as that enjoyed by a Provincial Legislature in Canada could, while preserving its own capacity intact, seek the assistance of subordinate agencies, as had been done when, in *Hodge* v. *The Queen*, 9 A.C. 117, the Legislature of Ontario was held entitled to entrust to a Board of Commissioners authority to enact regulations relating to taverns; but it does not follow that it can create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence. Their Lordships do no more than draw attention to the gravity of the constitutional questions which thus arise.

It should be observed that the Privy Council held, many years ago, that the Provincial Legislatures of Canada had the benefit of s. 5 of the Colonial Laws Validity Act, 1865,[1] so that the question raised by their Lordships would seem in their view not to be unequivocally answered by the provisions of that section.

The nature and extent of the power of colonial legislatures has been considered in the Privy Council on several occasions in relation to the delegation of powers.[2] It is now one of the commonplaces of constitutional law that these Legislatures are not to be deemed the delegates of the Imperial Parliament whose Act creates them and defines their powers. When they legislate, the case is not one of the Imperial Parliament making laws through them,

[1] *Fielding* v. *Thomas*, (1896) A.C. 600.

[2] *R.* v. *Burah*, (1878) 3 A.C. 889; *Hodge* v. *The Queen*, (1883) 9 A.C. 117; *Powel* v. *Apollo Candle Co.*, (1885) 10 A.C. 282.

though there are expressions in the Privy Council judgment in *Webb* v. *Outtrim* [1] which suggest it.

Every Act of the Victorian Council and Assembly requires the assent of the Crown, but when it is assented to it becomes an Act of Parliament as much as any Imperial Act, though the elements by which it is authorised are different (p. 88).

The principles of agency throw no light even by analogy on the nature and powers of these Legislatures, not being delegates of the Crown or of the Imperial Parliament or of the people. The rule which forbids the agent to delegate his powers does not apply to them. It does not follow, however, that because they are not agents their powers are unlimited. Like every other person or body whose power is derived from statute, their powers are limited by the grant; and it may be that some limit on the power of delegation is inherent in the terms of the grant.

The power to make laws, extensive as it is, was vested in a designated authority and in no other. Whatever claims obedience as law must establish its claim to that character as being made or imposed by that prescribed authority itself. All the Privy Council decisions referred to are at pains to show that the particular delegation in question was by an Act wherein the Legislature itself had exercised its own discretion over the subject-matter dealt with. Thus in *R.* v. *Burah*,[2] an Act of the Governor-General in Council removed a particular district from the jurisdiction of certain existing courts and offices, and placed it under new courts and offices to be appointed by the Lieutenant-Governor of Bengal; and authorised the Lieutenant-Governor to apply to such district or any part of it any of the laws in force in other territories subject to his government; and the Act was to come into operation on such day as the Lieutenant-Governor should direct. The effect of what was done was that "the proper Legislature had exercised its judgment as to place, person, laws, powers; and the result of that judgment had been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute." At the same time, their Lordships agreed "that the Governor-General in Council could not by any form of enactment create in India and arm with general legislative authority a new legislative power not created or authorised by the Council's Act" (*i.e.* the Indian Councils Act of the Imperial Parliament, 24 & 25 Vict. c. 67).

[1] 1907 A.C. 81.

[2] 3 A.C. 889, 905.

In *Hodge* v. *The Queen* [1] the Privy Council speaks of the action of the Ontario Legislature in committing to Commissioners authority to make regulations for the conduct of licensed premises as a step having for its object the carrying of the enactment into operation and effect, such an authority being ancillary to legislation, a power without which an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail (p. 132). And, as to the argument that by its action the Legislature effaces itself, the Board said: "It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into its own hands."

In *Powell* v. *Apollo Candle Co.*,[2] it had been decided in the Supreme Court of New South Wales that a provision in the Customs Act authorising the Governor in Council to direct a proportionate duty to be levied on any article which in the opinion of the collector or commissioners of customs contained properties which made it a substitute for a dutiable article, was void as an imposition of taxation by the Governor in Council, the Constitution having conferred the taxing power on the Legislature alone. The Privy Council held that in such a case the duty was levied under the authority of the Act—"the Legislature has not parted with its perfect control over the Governor, and has the power of course at any moment of withdrawing or altering the power which they have entrusted to him" (p. 291).

The Control of the Delegating Legislature.—One limitation upon the disposing power of a Legislature appears clearly from these decisions: the legislative power of delegation imports the retention of complete control by the delegating Legislature. In general this condition would be satisfied by the fact that the Legislature can repeal its own Act, and that therefore the retention of control is inherent; any authority it set up must be subordinate to it. But the matter is not quite so simple. If the King, the Legislative Council and Legislative Assembly, in whom the Legislative power is vested, should purport to confer a general concurrent legislative power on some one or two parts of the Legislature, or on some other authority, there would be an act which, if valid, was an abdication of control: the Legislature would be as much subject to control by its creature as capable of controlling it. Nor, again, would the inherent power of repeal cover the case in which

[1] 9 A.C. 117. [2] 10 A.C. 282.

a Legislature purported to abolish itself and confer its power on another person or body in substitution for itself.[1]

In regard to such cases, it may be said with confidence that such an abdication by a colonial Legislature could not be justified under its legislative power, plenary though it is. The Imperial Parliament having designated the body which shall be competent to exercise legislative power in subordination to no other authority than the Imperial Parliament itself, the establishment of some other authority of equal status either along with or in supersession of the designated body is inconsistent with the grant itself, and is an alteration of the constitution and the powers established by the Imperial Parliament Only when a further power—the power to alter the constitutions and powers of the legislative body—has been conferred could acts of the kind now under consideration be justified. Such powers have been conferred in many colonial constitutions, and are in the case of representative Legislatures conferred generally by the Colonial Laws Validity Act, 1865, s. 5.

Is the retention of control by the Legislature the sole condition which governs delegation? Would it be lawful to commit to, say, a Royal Commission full power to make laws for the peace, order, and good government of the colony in all cases whatsoever, subject to the limitation that any law made by such Commission inconsistent with any Act passed by the Legislature shall be invalid, and that the Commission may make no law which relates to the constitution or powers of the Legislature itself? To take a specific case.[2] In 1871 the Law Officers of the Crown were called on to advise upon a suggestion that the Legislature of the Cape of Good Hope might establish within a colony a number of subordinate provincial Legislatures. The Secretary of State, in a despatch to the Governor, announced that the Law Officers[3] advised that the Cape Legislature had no power, without the assistance of the Imperial Legislature, to divide the colony into provinces and to invest the provincial authorities with legislative and administrative powers subordinate to a supreme colonial Parliament.

To exercise such a power would be using the constitution created by the Letters Patent to destroy itself; the Letters Patent give the Legis-

[1] *Cf.* Dicey, *The Law of the Constitution*, 8th ed., p. 66 note.

[2] The power of colonial Legislatures to delegate to or vest powers in other authorities is referred to by various writers, notably in A. I. Clark's *Australian Constitutional Law*, pp. 41 *seq.*; Berriedale Keith's *Responsible Government in the Dominions*, pp. 355 *seq.*, 365 *seq.*; Clement's *Canadian Constitution* (1916), p. 35 and Lefroy's *Canada's Federal System*, pp. 69–75.

lature power to make laws, but it was not intended to invest it with power to make laws of every kind, but only such laws as are not inconsistent with the form of government constituted by the Letters Patent themselves. Nor has the legislature power to delegate to others the function of legislation entrusted to itself. It follows that the colonial Legislature has no power to divide the colony into provinces, if by that division anything more is intended than a subdivision for administrative purposes, which will leave untouched the constitution created by Letters Patent.[1]

The actual decisions of the Privy Council that have been referred to certainly do not establish, as of authority, so broad a claim, and the *dictum* cited from *R.* v. *Burah* denies it. In *R.* v. *Burah* and *Powell* v. *Apollo Candle Co.* the Legislature had set up a complete legislative scheme, to be brought into operation when the Executive should determine, and in the latter case had specified the grounds on which the executive determination was to be based. In *Hodge* v. *The Queen*, the matter is less clearly one of " conditional legislation " ; but the power conferred is one which is to be exercised not for the whole Province, but for particular districts with varying needs and desires, which the Legislature provides for by remission of the matters to local determination. In all the cases there had been some exercise of judgment and discretion by the Legislature itself on the subject-matter dealt with, so that it was possible to regard the rule set by the delegate authority as one imposed by the Legislature itself. Powers to establish rules and regulations incidental to actual legislation, to carry out such legislation, to supplement and complete it, to fix time and place at which it shall come into operation, are all included in the power to make laws.

The subject of delegation by the Legislature has received much attention in the United States (see, for example, Cooley's *Constitutional Limitations*, p. 163 (7th ed.), and Willoughby's *Constitutional Law*).

The leading case on the subject in the United States is *Field* v. *Clark*, 142, U.S., where at p. 694 the following passage is cited with approval from the opinion of the Pennsylvania Court in *Moers* v. *City of Reading* :

The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend.

[1] Cd. 508, p. 13 (1872). See Keith, *Responsible Government*, vol. i., p. 367.

To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making authority, and must therefore be subject to inquiry and determination outside the halls of legislation.

Conditional Legislation. — In the Australian case of *Baxter* v. *Ah Way*[1] there was a provision in the Commonwealth Customs Act establishing a category of "prohibited imports," and imposing a penalty on importation. The section set out an enumeration of prohibited imports, and included among them "all goods the importation of which may be prohibited by proclamation." The High Court of Australia held that this was "conditional legislation" by Parliament itself, and accordingly sustained a proclamation prohibiting the importation of opium. Isaacs J. (at p. 641) says: "The Governor-General does not legislate, using that word in the true sense. There is no subject handed over to legislate upon as he pleases without any substantive provision as to consequences by the Parliament itself." With all deference to the Court, it is not very clear that the matter falls within the principle of conditional legislation. No direction or guide is given to the Executive; there is an unqualified power in the Executive to exclude anything on any ground or no ground. All that Parliament has done is to provide the means of coercion; its only will is that what the Executive has decreed as to the goods that may be imported is law. The other ground taken by the Court appears the stronger: that common experience shows that in certain classes of cases it is not practicable or desirable for the Legislature to do otherwise than leave the utmost discretion to the Executive. It would hardly be possible on any narrower ground to support the delegations of rule-making power that have been made to the Executive during the war.[2] The influence of accustomed methods is seen in the judgments in all the cases that have been cited above. Subjects differ from each other in their aptness for treatment by a representative Legislature. There is a distinction, for instance, between those matters which are essentially matters of administration to which legislation is really ancillary, and, on the other hand, matters which are essentially legislative, with an attendant and

[1] (1909) 8 L.C.R. 626.

[2] See also the Australian case of *Roche* v. *Kronheimer* (1921) to be reported in 29 Commonwealth Law Reports, where the High Court sustained the Treaty of Peace Act conferring upon the Governor-General a power to do all things necessary to give effect to the Treaty, and a Regulation issued under the Act embodying provisions of the Treaty.

incidental administration. Defence is an example of the first: there is a defence service to be organised, directed and controlled. The measures to be taken in the interest of defence, whether in peace or war, call for the exercise of a special kind of knowledge and judgment which the Legislature does not affect to possess. In such matters the Legislature exercises its judgment when it remits them to a competent authority. On the other hand, there are matters which are primarily matters of legislation, *e.g.* bills of exchange, banking, marriage, property, and contract rights, as to which certainly the same practical reasons for delegation could not be assigned.

Legislative Powers in the United States.—In the United States the principle applicable to delegation appears to be that, while the Legislature may commit powers, it may not delegate *legislative* powers, and much subtle classification and distinction goes to the solution of problems which arise in an ever-growing tendency to enlarge administrative discretion. But there are, at any rate, two considerations which distinguish the American situation from our own: first, that in the United States the Legislature is itself regarded as holding the legislative power by delegation from the people; secondly, that legislative, executive and judicial power having been communicated by the constitutions to distinct organs, each is restricted to its own sphere and may not intrude on the others. Further, we must bear in mind the description of the nature of colonial Legislatures as repeatedly given by the Privy Council: "Plenary powers as large and of the same nature as those of Parliament itself" (*R.* v. *Burah*) [1]; "authority as plenary and as ample within the limits prescribed . . . as the Imperial Parliament in the plenitude of its powers possessed and could bestow" (*Hodge* v. *The Queen*) [2]; "a Legislature restricted in the area of its powers, but within that area unrestricted" (*Powell* v. *Apollo Candle Co.*) [3]; "if indeed it were repugnant to the provisions of an Act of Parliament extending to the colony, it might be inoperative to the extent of its repugnancy (see the Colonial Laws Validity Act, 1865); but, with this exception, no authority exists by which its validity can be questioned or impeached" (*Webb* v. *Outtrim*) [4]; "the legislature of Queensland is the master of its own household, except in so far as its powers have in special cases been restricted" (*McCawley* v. *The King.*)[5]

[1] 3 A.C. at p. 904. [2] 9 A.C. at p. 132. [3] 10 A.C. at p. 290.
[4] (1907) A.C. at p. 88. [5] (1920) A.C. at p. 714.

"The nature" of the Imperial Parliament—putting aside any question that may arise as to the effect of the Parliament Act, 1911—is that it is supreme over all other authority; that any division or distribution of powers is dependent on its will; that it may assume non-legislative powers, that it may devolve legislative powers. Can we, in the case of a Legislature built after this model, say that the limits of its powers of devolution are reached when what is disposed of is found to be not administrative or executive or judicial, but legislative in its nature?

But if it is once established that the Legislature may delegate not merely power supplementary to its own legislation, but legislative power itself, are not all other considerations—the extent of the legislative power which may be delegated—matters of judgment and discretion which can be subject to no authority other than the Legislature itself? It is of the nature of the Imperial Parliament to determine which of its powers shall be exercised by authorities in subordination to itself. Granted that a colonial Legislature must not part with its supreme control, is there any other limitation upon delegation than the will of the Legislature itself? Would not Courts trained in the traditions of parliamentary sovereignty decline to enter upon the inquiries which, under the influence of the doctrine of people's sovereignty and the separation of powers, have proved so troublesome in American Courts?

The Crown's Power of Disallowment.—There is one matter, however, to be considered here. The Acts of the colonial Legislature are subject to the power of the Crown, on the advice of Imperial Ministers, to disallow them. Other activities of the colonial Government, including those of the agents and instruments set up by that Government, are not subject to such supervision. It is therefore an objection to an unrestricted power of delegation that it may enable things to be established as law which, had they been set down in the Act of the Legislature itself, would have been in peril of disallowance on Imperial grounds. The case is not a fanciful one; discriminations have in some cases been made by rules issued by the subordinate authority which would hardly have passed scrutiny in an Act of Parliament. The answer to the objection appears to be that it is more political than legal, and that the Crown's power of disallowance if evasion is threatened must be protected by action taken when the delegating Act itself is passed. That is to say, if an Act is passed which by reason of its extensive

delegation of powers suggests the danger referred to, the Crown can at that stage exercise its power of disallowance.

But colonial Legislatures to-day have more than a general legislative power. Under the Colonial Laws Validity Act, 1865, s. 5, they may as representative Legislatures make laws respecting the constitution, powers and procedure of such Legislature. The effect of this provision was recently considered by the High Court of Australia in *Taylor* v. *A.-G. for Queensland* (1917), 23 C.L.R. 457. In that case an Act and a Bill of the Queensland Legislature were under consideration. The Legislature (which was, of course, a "representative Legislature" within the meaning of s. 5 of the Colonial Law Validity Act) had made an enactment (The Parliamentary Bills Referendum Act, 1908) whereby when a Bill passed by the Legislative Assembly (the elective chamber) in two successive sessions had in the same two sessions been rejected by the Legislative Council (a nominee chamber) it might be submitted by referendum to the electors, and, if affirmed by them, was to be presented to the Governor for His Majesty's assent. It thus provided for an alternative Legislature exercising concurrent power with the King, the Legislative Council, and the Legislative Assembly, the Legislature established by the original Order in Council founding the Colony in 1859. This Act having been passed, a Bill for the abolition of the Legislative Council was passed in two successive sessions by the Assembly and rejected by the Council. This Bill was then submitted to the electors under the preceding Act. The questions before the High Court were: (1) whether the Parliamentary Bills Referendum Act was valid, (2) whether there was power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the Parliamentary Bills Referendum Act.[1] The Court held (unanimously) that the Parliamentary Bills Referendum Act was a law respecting the constitution or the powers of the Queensland Legislature within the meaning of s. 5 of the

[1] The original proceedings were taken in the Supreme Court of Queensland, which granted an interlocutory injunction against taking the referendum. The Government appealed to the High Court, which *pro forma* allowed the appeal for the purpose of removing the matter into the High Court, where it was argued upon a special case. Meantime, the Government having undertaken not to act upon the result of the referendum pending the decision of the Court, the referendum took place. The electors rejected the Bill, and consequently, in the opinion of some of the Justices the Court ought not to answer questions which had become hypothetical, except so far as the answers to them should lead up to the determination of the matter of costs. The majority of the Court, however, held a different opinion.

Colonial Law Validity Act; and that a Bill for the abolition of the Legislative Council was a law respecting the constitution of the Legislature, within the same provision.

The "grave question" raised by the Privy Council in the Initiative and Referendum Act [1]—whether a colonial Legislature "can create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence"—is thus answered by the High Court in the affirmative as to Legislatures which come under the Colonial Laws Validity Act. It will be observed that in this case there is no reservation of control by the Parliament of Queensland; the powers of the new legislative authority are as ample as those of the Parliament itself. The Parliament might no doubt repeal the Act of 1908, and thus restore its supremacy. But equally—if the Act were valid—the new legislative authority could destroy the old. In fact, the argument on the second point—the power to abolish the Legislative Council—was directed to the question whether the Parliament of Queensland had itself such power. The Court rejected the argument that the power of a representative Legislature to make laws respecting the constitution, powers and procedure of *such* Legislature was limited by the obligation to preserve the identity of all the component parts of that Legislature. The Legislature was not, for instance, limited in respect to the Legislative Council to changes in the constitution of the Council, as by substituting a system of election for nomination; it might abolish the Council itself, substituting some other authority with all or any of its functions, or it might leave the powers of the Legislature to be exercised by the parts remaining, the Crown and the Legislative Assembly.

The Court did not go the length of holding that under s. 5 the Legislature might substitute for itself some wholly distinct authority, constituted according to the uncontrolled will of the Legislature. Barton (p. 468), Isaacs (p. 474), and Power (p. 481) JJ. were of opinion that probably the representative character of the Legislature must be maintained "as a basic condition of the power relied on." Duffy and Rich JJ. (p. 477) expressed no opinion in the matter, as being unnecessary to the decision. Isaacs J. was of opinion that there was a further limitation—"When power is given to a colonial Legislature to alter the constitution of the Legislature, that must be read subject to the fundamental conception that, consistently with the very nature of our constitution as an Empire, the Crown is

[1] (1920) A.C. 935, 945.

not included in the ambit of such a power" (p. 474). Therefore the Crown was an essential part of the legislative authority, and could not be eliminated by the Legislature.

In regard to the first limitation suggested by their Honours, it is necessary to recall the terms of s. 5 of the Colonial Law Validity Act—" every representative Legislature shall have . . . full power to make laws respecting the constitution, powers and procedure of such Legislature." It is plain that any Act made pursuant to s. 5 must rest on the continuance of legislative authority; it would be a mere invalidity if the Legislature should do as Lord Bryce and Professor Dicey (*Law of the Constitution*, 8th ed., p. 66 note) have suggested a sovereign Legislature might do—repeal all laws relating to its constitution, dissolve itself and make no provision for its successor. A valid exercise of the authority given by s. 5 must be directed to the constitution of a Legislature; but, as the qualification for the exercise of the power is the representative character of the Legislature, and as the subject-matter is the constitution, powers and procedure of *such* legislature, it is not unreasonably inferred that the maintenance of this representative character is " somewhat fundamental."

The matter may be put in a slightly different way. While the Legislature may devolve its powers on any authority constituted as it pleases so long as it retains its own supremacy, no body created by the Legislature could have concurrent power or the full succession of power unless it was a " representative Legislature," for it would not be qualified to exercise the powers of s. 5 of the Colonial Laws Validity Act itself, powers which the Legislature could not abdicate without providing an authority constituted to exercise them.[1]

The other fundamental limitation suggested by Isaacs J. is more doubtful. It was argued against the Act that if, under the power to make laws respecting the constitution of the Legislature, Queensland could eliminate the Council, it could also eliminate the Assembly or the Crown from the Legislature. The position of the Assembly has been considered. As to the Crown, Isaacs J. considered that the term " Legislature," in the expression " constitution

[1] Professor Berriedale Keith (*Responsible Government*, vol. i, p. 366) appears to be of different opinion. While he is of opinion that a colonial Legislature cannot merely extinguish itself with no provision for the continuance of legislative authority, he holds (as I understand him) that a representative Legislature may under s. 5 substitute for itself a non-representative authority, which authority can exercise the power given by s. 5 of changing its own composition as a Legislature—that it is in the fullest sense a successor. (See also p. 425.)

of the Legislature," in s. 5 of the Colonial Laws Validity Act must be read as excluding the Crown, and he cited many instances in which the term is used, even in statutes, to describe the chambers of the legislative body and not the full legislative authority itself. This meaning, however, unless it is forced upon us by the terms of any particular case (as in s. 7) is in the present Act inadmissible, for the definition section expressly declares that in this Act the term Legislature signifies the authority other than the Imperial Parliament or Her Majesty in Council competent to make laws for the colony. Such authority includes the Crown or the Governor, according as the constitution of the colony has designated the one or the other as the head of the law-making authority. There is one point at which the colonial Legislature under s. 5 cannot eliminate the Crown—the Crown's power of disallowing colonial laws, which, according to what seems the better opinion, is exercised by the Crown not acting as part of the Legislature, but in a superintending capacity [1]: it is not, therefore, comprised in a power to make laws respecting the constitution of the Legislature.

The Crown's power of disallowance, and the inability of the colonial Legislature to reach it under s. 5, is especially related to his Honour's argument from " the very nature of our constitution as an Empire." The supervisory power exercised in the case of every Legislature by the Crown on the advice of the Imperial Ministry has a real significance of legal and constitutional unity, as has the supremacy of the Imperial Parliament. If, however, his Honour applies the argument to the Crown as an assenting party to legislation and as a part of the actual law-making authority the implication is not very strong. Colonial constitutions do in fact vary as to whether the King is made a part of the law-making authority—in a number of cases the Governor figures, and not the Crown.[2] No doubt the power is conferred upon the Governor because he is the representative of the Crown, but it is none the less a statutory function which belongs to him in such cases as *persona designata* and to no one else. A century's legislation has reduced to a fiction the old theory that executive power was vested in the Crown alone as matter of law [3]; both in the United Kingdom and in the colonies great numbers of executive acts are done

[1] *Cf.* Clark's *Australian Constitutional Law* and Brinton Coxe's *Judicial Power and Unconstitutional Legislation*, pp. 205 *seq.*

[2] For examples see Keith, *Responsible Government*, vol. i, p. 458.

[3] See Maitland, *Constitutional History*, p. 415.

by and in the name of the particular officer charged with their execution. In the case of a colonial Legislature there seems nothing fundamental or Empire-binding in the actual position of the Crown as part of the law-making authority. There is at the present day a dangerous tendency to rely overmuch on the unity of the Crown despite the fact that it acts through distinct and perhaps conflicting agencies.

There remains this question. Let it be assumed, contrary to what is suggested above, that the generality of a colonial Legislature's delegation of a power to make laws in subordination to itself is subject to some limitation, and that it is possible to find some principle which will trace the line between what they may do and what they may not do. We have seen also that many Acts which, as depriving a colonial Legislature of its control over a legislative power would have been plainly invalid as in substance altering the constitution or powers of such Legislature, are now valid under the power to make laws respecting the constitution and powers of such Legislature conferred by s. 5 of the Colonial Laws Validity Act. Can we go further and say that all objections to even the most extensive delegation by the Legislature to some authority subordinate to itself are deprived of their force and validity, since every such Act, if not a good exercise of the ordinary legislative power, may claim validity as a law with respect to the constitution and powers of such Legislature? In other words, every Act and every provision of an Act, by the fact that it is not within the general legislative power, is an Act respecting the constitution or powers of the Legislature, and valid under that head? In other words again, that every Act which otherwise would be in breach of the constitution is by s. 5 of the Colonial Laws Validity Act transformed into a valid Act as respecting the powers and constitution of the Legislature? This brings us to aspects of the powers of colonial Legislatures considered in *McCawley* v. *The King*.[1]

[1] (1920) A.C. 691; (1918) 26 C.L.R. 9.

THE HAGUE RULES, 1921.

[*Contributed by* C. R. DUNLOP, ESQ., K.C.]

THE Rules known as the Hague Rules, 1921, are a short code of rules relating to contracts of carriage of goods by sea contained in bills of lading. They deal mainly with the contentious problem as to the incidence of the risks of loss or damage to which goods carried by sea are exposed, and in effect state which of such risks are to be borne by the carrier, and which by the owner of the goods. They also deal with the obligation on the carrier to issue a bill of lading, the responsibility of the carrier and the shipper respectively for the accuracy of its contents, and with some of the legal effects of a bill of lading as between the carrier and the owner of the goods. They owe their existence to a widespread dissatisfaction with modern bills of lading amongst merchants, who import or export goods, bankers, who finance them, and underwriters, who insure them; secondly, to the desire on the part of shipowners generally to meet, as far as their own interests permit, the wishes of their customers; and, thirdly, to the general opinion that bills of lading are not likely to acquire the qualities they ought to possess, unless they are made subject to definite rules to be enforced by legislation or to be adopted by business men by voluntary agreement.

Bills of lading are as essential to trade as bills of exchange. A bill of lading is the receipt given on behalf of the carrier by sea to the shipper for the goods shipped or received for shipment. Whilst the goods are in the custody of the carrier, it is the document of title to the goods which it represents. It is bought and sold, pledged as security for loans or advances, or otherwise dealt with as a commodity in much the same way as the goods themselves. It also contains the terms of the contract of carriage as between the carrier and the holder of the bill of lading, other than the charterer of the ship, whose rights and obligations depend on the charter-party. The contract of carriage in the bill of lading is assignable by the shipper or any subsequent holder by indorsement and delivery of the bill of lading. A bill of lading is an undertaking on

behalf of the carrier to deliver the goods described in it at their destination to the lawful holder of it, in the condition in which the goods were when shipped, unless prevented by excepted perils expressed in the bill of lading or implied by law. The earliest bills of lading did not contain any express exceptions. The carrier was liable for any loss of or damage to the goods, unless he could prove that the same was due to excepted perils implied by law, such as the act of God, enemies, or inherent vice of the goods themselves. A decision of the English Courts in 1795, that a shipowner was liable for damage to cargo owing to perils of the sea and without negligence, led to the introduction into bills of lading of the exception of "dangers of the sea." Since then the process of adding to the list of exceptions steadily continued as successive cases decided that shipowners were liable for risks which they were unwilling to take. Bills of lading gradually ceased to be "carrier's risk" bills of lading, and became "owner's risk" bills of lading, or a compound of both in almost infinite variety. The Courts in England, while recognising and giving effect to the salutary common law principle of freedom of contract amongst business men, have generally been astute to find loopholes in exception clauses, and their decisions have tended to increase the length of such clauses by leading to the insertion of the further words necessary to give them the wider effect desired by the shipowner. In the United States of America, some of the Courts took a bolder and more decisive line with exception clauses. They decided that clauses exempting the shipowner from liability for negligence, in relation to the seaworthiness of the ship or the care of the cargo, were contrary to public policy and therefore void. In 1893 the American Harter Act was passed, partly to remove doubts as to the validity of exceptions which were then in common use, and partly to secure uniformity in bills of lading issued in the United States. The Act is important, because it is the parent of subsequent legislation in other countries, and the foundation of the Hague Rules.

The Act made it unlawful to insert in any bill of lading any clause relieving the owner of any vessel, transporting merchandise between ports of the United States and foreign ports, from liability for loss or damage arising from negligence in the loading, stowage, custody, care or delivery of any merchandise committed to his charge, or lessening or avoiding his obligations to exercise due diligence to make the vessel seaworthy for her intended voyage, or carefully to handle, stow, care for, and properly deliver her cargo. It further provided that, if the owner did exercise due diligence to make the vessel

in all respects seaworthy, he should not be responsible for loss or damage resulting from faults in the navigation or management of the vessel, or from dangers of the sea, and other specified perils not attributable to negligence on the part of the carrier. The Act also declared that it was the duty of the owner, master, or agent of the vessel to issue to the shipper a bill of lading stating, among other things, the marks necessary for identification of the goods shipped, and their number, quantity, or weight, as the case might be, and the apparent order or condition of the goods received by or on behalf of the shipowner, and further declared that the bill of lading should be *prima facie* evidence against the carrier of the receipt of the goods therein described. Finally, the Act made the shipowner or his representative liable to a fine for a violation of any of its provisions. The Act has continued in operation for twenty-three years. Acts similar in substance or policy to the Harter Act, though differing in details from the Harter Act and each other, were passed in Australia in 1904, Fiji in 1906, New Zealand in 1908, and Canada in 1910. Legislation on similar lines is being considered in South Africa, France, Holland, and the Scandinavian countries. Recently the British Imperial Shipping Committee held an inquiry on the subject of bills of lading in connection with overseas trade within the British Empire, and, after taking evidence, recommended uniformity of legislation in the British and Colonial Parliaments on the lines of the Canadian Act of 1910. The policy embodied in the Harter Act has, therefore, after many years of experience, commended itself to business men in every quarter of the world.

One of the disadvantages of the Harter Act and the Colonial Statutes referred to is that they are necessarily local in their application, and they all differ from each other. So far from simplifying bills of lading, the result has rather been to add to their complexity. A British shipowner, for example, on whose behalf a bill of lading is issued in the United States, is bound by the Harter Act to comply with its provisions. For many years this has been done by adding to the numerous clauses in the bill of lading a clause paramount to the effect that the shipment is subject to all the provisions of the Harter Act. The result is that the bill of lading probably contains clauses which are inconsistent with the Act, and are therefore made inoperative by the clause paramount. Lord Esher, in 1895, described such bills of lading as " clumsy to the last degree " ; but, as the use of them has since continued, it may be inferred that a better method of giving effect to such legislation has been impracticable.

A glance at the usual bill of lading issued in America by the regular steamship lines would show that it is a very complicated document, and contains a large number of clauses in small print. If business men had the leisure to read them, they might have some difficulty in understanding some of them, and they would not unlikely arrive at different conclusions as to their legal effect. As to which conclusion was right, only a decision of the highest appellate tribunal might finally determine. The difficulty is that in construing a bill of lading, regard must be had to all the clauses it contains, the particular Act to which it may be subject, the warranties or terms implied by common law, and any previous legal decisions which may have some bearing on the construction of the document. Further, the meaning or legal effect of a bill of lading may depend on the law of the particular country where the dispute may have to be decided by legal proceedings or arbitration.

Another disadvantage of the Acts referred to is that they are in no sense codes. The Canadian statute is the latest and most complete model of legislation on the subject, and it was recommended by the Imperial Shipping Committee for general adoption throughout the British Empire. But, like the Harter Act, it merely prohibits the insertion in bills of lading of certain exemptions from liability for unseaworthiness and negligence, and makes them void if they are inserted. It also provides in favour of carriers certain exemptions from liability, which are wider than those in the Harter Act, and contains similar provisions for the issue of a bill of lading. Unlike the Harter Act, it limits the carrier's liability for loss or damage to one hundred dollars per package, unless a higher value is stated in the bill of lading.

During the summer of 1921, the Report of the Imperial Shipping Committee, and the evidence given before it, were carefully considered at a Conference of the Maritime Law Committee of the International Law Association. With a view to the international adoption of a bill of lading which would be simple, uniform, reasonable, and suitable for general use in overseas trade, a code of rules was drafted embodying the terms which, speaking generally, merchants, bankers, and underwriters desired. In the autumn the draft was submitted at a Conference of the Maritime Law Committee held at the Hague under the chairmanship and guidance of Sir Henry Duke, the President of the Probate, Divorce, and Admiralty Division of the High Court and of the Prize Court in England. Leading representatives of shipowners, merchants,

bankers, and underwriters in England and other Maritime States attended the Conference and took an active part in the discussion of the proposed rules. The representatives of the shipowners submitted certain amendments, and these, with the draft rules, were discussed in detail. Agreement was reached on all points, and a code, which was then named "The Hague Rules, 1921," was approved unanimously, and was recommended by the International Law Association for international adoption.

The Rules consist of seven Articles. The first Article is an interpretation clause. Its importance consists in the effect it has of limiting the application of the Rules to contracts of carriage contained in bills of lading, and their operation to the period from the time the goods are received by the carrying ship to the time when they are unloaded from her. The Imperial Shipping Committee recommended in their Report that the legislation which they suggested should apply only from the actual loading until the unloading. To this recommendation the Hague Rules have given effect. The sixth Article expressly leaves the carrier and the shipper free to make any bargain they please as to the liability of the carrier in connection with the goods prior to the loading or subsequent to the unloading. The Rules, therefore, do not apply to any of the auxiliary services which shipowners or their agents may render to goods before they are shipped for carriage by sea, or after they are discharged; such as collecting, warehousing, forwarding, distributing, or transporting them to or from the ship which carries them by sea. Through bills of lading, or other bills of lading which provide for such services, will probably continue to contain clauses stating the conditions on which such services will be rendered.

The second Article in effect provides that under every bill of lading the carrier by sea shall be subject to the liabilities set out in the third Article, and entitled to the immunities in the fourth. The third and fourth Articles constitute a self-contained and comprehensive code of rules which define the risks which are to be taken by the carrier, and those which are to be borne by the owner of the goods. Whilst goods are on board a ship they are exposed to risks of being damaged or lost, owing to the ship being unseaworthy or unfit at the commencement of her voyage to receive or carry the goods safely on the agreed voyage, or owing to negligence on the part of the carrier or his servants, or negligence of the shipper, or owing to perils of the sea or other causes not attributable to unseaworthiness or negligence. The Rules apportion these risks

between the carrier and the owner of the goods in the way the Harter Act and Colonial Statutes in effect have done, and in the manner which experience has shown to those concerned in the carriage of goods by sea to be just or convenient. The carrier has to bear the risk of loss or damage to the goods arising from the following causes: first, unseaworthiness or unfitness of the ship due to the failure of the carrier or his servants or agents to exercise due diligence before and at the commencement of the voyage to make the ship seaworthy, or to make the holds, refrigerating chambers, or any part of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation; secondly, negligence of the carrier or his servants or agents in the handling, loading, stowage, carriage, custody, care, or unloading of the goods. On the other hand, the owner of the goods has, in the absence of express stipulation to the contrary in the bill of lading, to bear the risk of loss or damage to them arising from the following causes: first, unseaworthiness not caused by want of due diligence on the part of the carrier or his servants or agents, or latent defects not discoverable by due diligence; secondly, negligence of the ship's mariners in the navigation or management of the ship; thirdly, perils of the sea, fire, and any other cause of loss or damage not attributable to negligence on the part of the carrier or his servants; fourthly, deviation from the usual or authorised course of the voyage in saving or attempting to save life or property at sea; fifthly, inherent vice of the goods or insufficiency of packing or marks; sixthly, any act or omission of the shipper or owner of the goods or his agent; seventhly, the dangerous nature of the goods, unless their nature and character were declared in writing by the shipper before shipment, and the carrier or his agent has consented to their shipment; and, lastly, the owner of the goods has to bear any loss or damage to them if their nature or value has been wilfully misstated by the shipper.

The incidence of the risks referred to is not left by the Rules to depend on any implied warranty of seaworthiness or any implied duty to use reasonable care, or on local Statutes, or on express exceptions in bills of lading, or on the uncertain results of interpretation by Courts or arbitrators of their combined effect. Under every bill of lading, to which the Rules are made applicable, the incidence of loss or damage ought in most cases to be reasonably clear when the facts are known or ascertained. The burden generally lies upon the carrier of proving that the loss or damage was due to a cause for which he is not responsible. He is

protected from belated claims for loss or damage by a provision that, unless written notice of claim is given to him or his agent at the port of discharge before the removal of the goods, such removal will be *prima facie* evidence of the delivery of the goods as described in the bill of lading, and in any event he will be discharged from all liability unless suit is brought within a year after the delivery of the goods. When the carrier is responsible, his liability is limited in any event to an amount not exceeding £100 per package or unit, unless the nature and value of the goods lost or damaged were declared by the shipper before the goods were shipped, and were inserted in the bill of lading. The limitation will not, however, be of much protection to carriers if the average value of packages or single articles carried is considerably less than £100, or if it is nearer the limit of one hundred dollars fixed by the Canadian Act. The Rules prohibit the parties from stipulating for a lower limit of liability.

The Rules permit the carrier to insert in any bill of lading any terms surrendering, in favour of the owner of the goods, any of the rights or immunities given to the carrier under the Rules; but they do not permit the carrier to contract himself out of liability for negligence or failure of duty in connection with the seaworthiness of the ship or the care of the goods, except in the special circumstances provided for in the fifth Article. The Rules, like the Harter Act and Colonial Statutes, make null and void any clause in a bill of lading which purports to avoid or lessen such liability. Subject to this important restriction, there is nothing in the Rules to prevent the continued use of special forms of bills of lading which have been designed for and are used in particular trades. The fifth Article, however, gives effect to a recommendation of the Imperial Shipping Committee, that in any code provision should be made for the exception of any particular goods, to which, for business reasons, the general rules might be inappropriate, or so burdensome on shipowners as to fetter trade or discourage fresh developments or new enterprises. The Article gives the carrier and shipper liberty, in regard to any particular goods, to enter into any agreement on any terms as to the carrier's liability for such goods, including his obligations as to seaworthiness or the care of the goods; but it requires that the terms agreed should be embodied in a receipt, which will be a non-negotiable document and must be marked as such, and it also provides that no bill of lading must be issued for goods carried under such special contract. The other Articles only apply to bills of lading

or similar documents of title, and not to contracts of carriage not contained in such documents. When a bill of lading is issued, to which the Rules apply, everybody dealing with it will know that it is governed by the Code. When a special contract is made with regard to particular goods, there will not be any bill of lading for them, and no third party should be misled.

The Rules also contain important and useful provisions with regard to the carrier's obligation to issue a bill of lading. Their object is to make bills of lading more reliable as documents of title, and to give the holder certain definite rights of which he cannot be deprived by any arrangement between the shipper and the carrier. The carrier is bound, on the shipper's demand, to issue a bill of lading showing the apparent order and condition of the goods when received by the carrier, and stating the leading marks necessary for identifying the goods, and their number, quantity, or weight, as the case may be. These particulars must be furnished in writing by the shipper before the loading starts. But the carrier is not obliged to issue a bill of lading containing any description or particulars which he has reasonable ground for suspecting do not accurately represent the goods actually received. The shipper guarantees to the carrier the accuracy of the particulars furnished by him, and is liable to indemnify the carrier against any loss or expense arising from any inaccuracy. There is no such guarantee in the Harter Act or any of the Colonial Statutes. The bill of lading, when issued, is *prima facie* evidence of the receipt by the carrier of the goods as described in it, except in the case of goods carried in bulk or whole cargoes of timber. In that case the claimant is required, in any claim against the carrier, to prove the number, quantity, or weight actually delivered to the carrier. There is, however, nothing in the Rules to prevent the carrier from agreeing, by means of a clause in the bill of lading, that in the case of bulk or timber cargoes, as with other goods, the bill of lading should be *prima facie* evidence against the carrier.

The Rules also recognise the existence of the practice of business men in some trades to use "received for shipment" bills of lading; but they do not create any obligation on anyone to use or accept them. On the contrary, they require the carrier to issue a "shipped" bill of lading after the goods are loaded, if the shipper so demands; but if a "received for shipment" bill of lading has previously been issued in respect of the goods, it must be returned to the carrier in exchange for a "shipped" bill of lading, or it may

be converted into a " shipped " bill of lading by being endorsed by the carrier or his agent with the name of the ship on which the goods have been shipped and with the date of shipment. Unless provision was made for the surrender of a " received for shipment " bill of lading before the carrier was bound to issue a " shipped " bill of lading, there might be different bills of lading in circulation for the same goods, and their value would in consequence be depreciated. There is amongst a considerable body of business men a dislike of " received for shipment " bills of lading. They are not so reliable as bills of lading which represent goods actually shipped on board a named ship on a particular date, and by their use frauds may be more easily practised. The Hague Rules have been severely criticised by the opponents of such bills of lading for apparently sanctioning their use. But the Rules neither encourage nor discourage them. They merely recognise the indisputable fact that in certain trades " received for shipment " bills of lading are used, and they make their surrender a condition precedent to the obligation of the carrier to issue a " shipped " bill of lading after the goods have been actually shipped. The Rules apply as between the carrier and the holder of the bill of lading, and not as between the buyer and seller of goods. The right of a seller to tender, or the obligation of the buyer to accept, a " received for shipment " bill of lading instead of a " shipped " bill of lading, depends, not on the Hague Rules, but on the terms of the contract of sale and the usage of the particular trade. Any buyer, who objects to a " received for shipment " bill of lading, may stipulate in his contract of purchase for a " shipped " bill of lading, and in that event he cannot be compelled to accept a " received for shipment " bill of lading. The Courts in England and Australia have recognised and given effect to the usage in certain trades to use " received for shipment " bills of lading, and have pronounced in favour of their validity. A " received for shipment " bill of lading is an appropriate document for a carrier to give for parcels delivered to him for shipment by the next convenient ship which can take them. The shipper wants a receipt for his own protection, and a document of title which he can use for raising money or carrying out his obligations to third parties. The carrier also wants it for his protection, as it contains or ought to contain the conditions affecting his responsibility for the goods from the time they are delivered into his custody. The conditions in the Hague Rules do not apply till the goods are put on board the carrying ship. In these circumstances a resolution was passed unanimously

at the Hague Conference in 1921, that in the opinion of the International Law Association the use of " received for shipment " bills of lading had become in many cases a necessity of commerce, and that there should be co-operation to remove difficulties which at present attend the use of such documents in the cases in which the necessity for their use is generally recognised.

The questions which have now to be faced and answered in the near future are whether Great Britain and the other Maritime Countries, which have not yet legislated on the lines of the Harter Act, ought to do so, or whether uniform legislation is desirable and attainable in all the Maritime States, or whether the need or demand for reform and uniformity in bills of lading can be satisfied by the voluntary adoption by business men of the Hague Rules, without any legislation, except such amendments in the existing legislation as may be necessary to enable the Rules to be applied in the United States and the British Colonies. The difficulties and delays in the way of obtaining uniform international legislation are so well known that they need not be dwelt upon here. Rules embodied in a Statute become stereotyped, and cannot readily be altered to meet the changing conditions of trade. The general opinion amongst business men appears to be that legislation is not desirable, if the result they desire can be achieved by voluntary agreement. The Hague Rules, like most rules arrived at by agreement amongst business men with conflicting or diverging interests, are a compromise, and therefore cannot be expected to satisfy everybody. They represent, however, an earnest and carefully considered attempt to satisfy the general need or demand for reformed bills of lading. They are founded on the principles and experience of existing legislation. Their language is simple, and the terms used are those with which business men are everywhere familiar.

The Hague Rules may repeat the history and share some of the success of the York-Antwerp Rules. It is worth recalling the history of the latter Rules. In 1860 the leading associations of business men in Great Britain issued a circular setting out the difficulties and disadvantages resulting from the want of uniformity in the laws relating to general average in the maritime countries. A Conference of representatives of these countries was afterwards held in Glasgow, and resolutions were passed embodying the rules which, by common consent, were considered fair and reasonable. The concluding resolution was that a Bill should be drawn up on the basis of the rules with the object of obtaining legisla-

tive sanction for them in Great Britain and other countries. The attempt to obtain legislation failed and involved considerable delay. In 1864 a Conference, presided over by a great English judge, was held at York, and a code was drawn up called " The York Rules." It was hoped that the code would receive legislative sanction ; but again business men were disappointed. Nothing further was done till 1876, when a Conference was held at Bremen, followed in 1877 by a largely attended Conference in Antwerp, in which the York Rules were adopted with slight modifications, and were called " The York-Antwerp Rules." Shipowners and cargo owners gradually agreed to insert in their contracts of carriage of goods by sea a clause providing that general average should be adjusted in accordance with York-Antwerp Rules, and underwriters inserted a corresponding clause in their policies of marine insurance. After the Rules had been voluntarily in use for about ten years, they were amended at a Conference at Liverpool in 1890 to meet the further requirements of business men. Since then the " York-Antwerp Rules, 1890," have been almost invariably adopted throughout the world by the insertion in contracts of carriage of the clause " General Average in accordance with the York-Antwerp Rules, 1890." The process of amendment to meet the changing conditions of commerce is likely to continue. Business men of to-day may do worse than imitate the wisdom of their predecessors by voluntarily inserting in charter-parties and bills of lading, in the trades to which the Hague Rules are appropriate, a clause to the effect that the shipment is to be subject to the Rules, and leave to the test of experience the question of their general adoption or amendment.

THE DEVELOPMENT OF NAVAL COURTS MARTIAL.

[*Contributed by* Sir Reginald Acland, K.C., *Judge Advocate.*]

The Naval Court Martial, as we know it to-day, has been gradually developed from the practice of days long past. Formerly there were no regularly constituted tribunals for the trial and punishment of offenders. The captain of a ship was supreme, certainly over all those below the rank of officers, and awarded punishment according to the "laws and customs of the Sea," which appear to have been as drastic as they were certainly ill-defined.

But over the captain was the Commander-in-Chief of the expedition, who seems in very early times to have received a commission from the Sovereign which gave to him personally the power to make ordinances and inflict punishments.

The Commission granted to Lord Howard of Effingham in 1571,[1] as Commander-in-Chief of the Fleet to oppose the Great Armada, gave him power to make ordinances, to punish offences against them, or to pardon them, to inquire into, examine, hear and judge all capital or criminal charges relating to the loss of life or limb in case of murder, and to determine the sentences. The power to punish was purely personal. There was no obligation to consult anyone, or to call a Court Martial or Council of War, as it seems then to have been called, but the Admiral or "Generall" was authorised to appoint a Lieutenant or Deputy Lieutenant "to carry out in our stead or in our name the services mentioned" in the Commission "or any of them."

Probably in the more serious cases a Council of War was held which advised the Generall of the facts and the appropriate punishment. This seems to be supported by the ordinances made by Howard and Essex in 1596.[2] In most cases there is nothing to show by whom the punishment was to be inflicted, and it was probably left to the captain. One clause runs as follows: "Picking and

[1] *Defeat of Spanish Armada*, vol. i, p. 21; *N.R.S.*, vol. i.
[2] *Naval Miscellany*, vol. i, p. 57; *N.R.S.*, vol. xx.

stealing you shall severely punish, and if the fault be great, you shall acquaint us Generalls therewith that Martial Law may be inflicted on the offenders."

The captain does not seem to have had express power to punish officers. If he was dissatisfied with them he put them ashore, and occasionally even confined them on board. Even after the Act of 1661, captains occasionally confined their lieutenants or put them ashore. In September 1704 a Court Martial was held to inquire into the difference between Captain Moore of the *Oxford* and his lieutenant, Toby Lyle.[1] The captain was found guilty of too severe and irregular confinements of the lieutenant, a decision which recognises the captain's right to confine. In 1708 Captain Hicks of the *Cornwall* was alleged by Lieutenant Tyer, " late gunner of the *Cornwall*," to have dismissed him and his servant and put them ashore at Lisbon. He was found to be justified as Tyer had been guilty of drunkenness and other irregularities, so Tyer was " accordingly dismissed from his employment." [2]

The Councils of War which advised the Admiral or " Generall " were the bodies out of which the Naval Courts Martial grew. It was probably some such Council of War which advised Drake before his condemnation of Doughty for mutiny, but it was certainly not a legally established tribunal. No actual record of that proceeding is, I believe, extant, but the formal record of Drake's proceedings against Burrough and the officers and men of the *Golden Lion* on May 30, 1587, survives.[3]

It can hardly be called a regular trial, for none of the alleged offenders were present, as three days before they had sailed away from the Fleet with which Drake was attacking Cadiz.

The record is of importance as it sets out the constitution of the Court and shows the claim which Drake made to be the sole authority to punish offenders. The report is headed :

A general Courte holden for the service of Her Ma^tie^ abourde the Elizabeth Bonaventure the XXX daye of Maye before Sir Ffranncis Drake Knighte Generall of Her Ma^ties^ Fleete Thomas Fennard Vice Admirall, Anthony Plotte Leivetennant Generall, John Marchant Sergeant Major and the reste of the Captaines and Masters of the Fleete as followeth.

The evidence of Captain Marchant and Captain Clifford is then set out, and the report proceeds :

[1] R.O. Ad. In. Letters, vol. 5265.
[2] *Ibid.*, vol. 5267.
[3] Oppenheim, *Administration of the Navy*, Appendix B.

On dewe consideracon whereof the Generall sayde :—althoughe I am not dobtefull what to do in this case or yet want any aucthoritie, but myselfe have from Her Maiestie sufficient jurisdiecon to correcte and punishe with all severitie as to me in discretion shalbe meete, accordinge to the Qualitie of the offences . . . yet for the confidence I have in your discretions as also to witness our agreament in judgment in all matters I praye you lette me heare your severall opynions touching this facte which hath been declared in your hearinge this daye : In my judgement it was as fowle and untollerable a mutanye as ever I have knowne.

Drake then proceeds to say that his " fiynall and diffinityve sentence is this," : that the persons named—

the pryncipall contryvers and leeders of this mutanye shall assone as I come by them wheresoever I find them within my powere abyde the paynes of death, iff not they shall remayne as deade men in lawe.

As might be expected after this outspoken lead from so masterful a person as Drake :

The whole Councell approved this sentence as iuste and necessarye for avoydinge the like hereafter which elces muste needes growe to the utter dissolucon of all Her Maiesties service for the sea hereafter.

Before dealing with the Acts and Ordinances of the Long Parliament, I must mention what perhaps further investigation may show was a form of tribunal, to which attention has not, I believe, hitherto been called.

Mr. Perrin, the Librarian to the Admiralty, mentioned to me one day that he had accidentally come across a case of a trial by jury on board ship. I have examined the original document in the Record Office.[1] It is a long manuscript account, by one " William Ball Mariner," of an unproductive voyage of the Earl of Warwick in 1627, in the form of a day-to-day diary.

Under date of June 12 the following appears :

this 12th day of June there was also a Martial Court called and appointed and a Jury panelled upon James Adams concerning the mutiny by him committed the 1st day of this month, and also for a shirt he stole on board our Admiral, " The Great Neptune," the time he was a prisoner being let loose only to come to prayer and he played the knave. Of which jury there were six of the Admiral's men appointed, four of the Hector's, two of the Jonathan's, and one of the Flight's, all chosen officers, and by his indictment whereof he was accused they found him to be guilty of mutiny and so delivered their verdict under their handwritings and left him to

[1] R.O.S.P. Dom., Car. I, 80, fol. 7.

the mercy of the Right Honourable The Earl of Warwick, Judge in that place and the Court assembled to be censured condemned him to be hanged, pronouncing that fearful sentence of death, "The Lord have mercy on his soul."

The extract given above seems to suggest that there was a jury as well as a Court. Ball is said in the Record Office calendar to have been the Master of the *Hector*, and seems from the form and substance of the narrative to have been a more or less educated man. He might have called the thirteen officers who composed the Martial Court a "jury," with which he would no doubt be familiar ashore. Against this view, however, it appears that a Court other than the "Jewrie" condemns a man to death, and that he was commended to the mercy of the Admiral, who, if Warwick's commission was similar to Howard's, would have had the power to pardon the man.

That there really was a jury in some cases seems to be supported by the ship's orders of the *Red Lion* dated 1627,[1] of which the fifth clause prohibits striking (except by those authorised) and opprobrious language, and then proceeds: "if he shall strike an officer he shall be tried for his life by twelve men." The ship's orders of the "Constant Reformation" dated 1638[2] do not contain any similar provision. The matter requires further investigation, and possibly reference to other similar tribunals may come to light.

The convenience of such a tribunal as that convened by Drake was soon recognised, and as the absolute power of the Sovereign declined, and that of Parliament grew, the right of the Commander-in-Chief to make ordinances, and to punish for their infraction, began to depend upon the authority of Parliament.

In my former article I directed attention to the steps taken by the Commonwealth Government to restore and make effective the discipline of the Navy, and need not do more here than repeat that, in the first instance, power of Martial Law was given to the Lord High Admiral; that his powers were transferred to the Council of State, and that later various Commissions were set up. By the Act of 1653[3] the Commissioners, or any three or more of them on land, or one or both of the Generals at sea:

were authorised and empowered . . . for the service of the Commonwealth and government of the Navy and Army at sea to call a Council or

[1] R.O.S.P. Dom., Car. I, 56, fol. 101.
[2] *Ibid.*, Car. I, 407, fol. 32.
[3] Statutes of the Interregnum, vol. ii, p. 708.

Councils of War, of captains or other officers as to them shall seem meet, and to appoint a Judge Advocate to attend the said Councils of War, who was authorised to administer an oath to witnesses. The "Council of War" was empowered to cause any person belonging to the Navy and Army at sea to be summoned before it, and to try him for offences against the "Articles or Ordinances of War, to give judgment and cause execution to be done according to the Articles." Any Ordinances were to be approved by Parliament before being put into execution.

The Articles of War, strictly so-called, had been passed by Parliament on December 25 of the previous year. There were, however, no regulations as to the summoning or constitution of the Council of War, which could be called by the Commissioners or one or both of the Generals at sea. In December 1653 Blake, Monk, Disbrow, and Penn, of whom the first three were Commissioners and the last a "General-at-Sea," acting in presumed exercise of the powers conferred by the Act, issued certain instructions which had for their object the creation of Courts inferior to the General Councils of War mentioned in the Act, and defining their powers.

They were of three degrees. The Commander of each squadron, with the assistance of a Council of War composed of the captains of his squadron, could try all offences committed in the Fleet under his command. Flag officers subordinate to the Chief Commander, calling to their assistance the captains of the ships in his division, could try offences committed in any ship in his division. The Commander of any three ships sent on detached service had the like power.

No sentence of loss of life or limb, nor the cashiering of any captain, was to be carried into execution without the approval of the "Generals," to whom were to be sent the depositions which were to be recorded with the Judge Advocate of the Fleet. Nor was any Lieutenant or Master to be cashiered without the approval of the Commander-in-Chief.

The captain of each ship was empowered with the assistance of the lieutenant, the master and his mates, the clerk of the cheque, gunner, boatswain, and carpenter (thus forming a ship Court Martial) to try all offences, but no sentence of loss of life or limb or the cashiering of any commissioned or warrant officer could be passed. Such cases were to be remitted to the "Commander of the Party," or of the division, or of the squadron, or ultimately to the Com-

mander-in-Chief, to whom alone the cases of loss of life or limb or cashiering of captains were reserved.

All commanders of ships of war were to attend " at all such times as a pendant or other signal for a Council of War shall be put forth," under penalty of loss of losing a day's pay for the first offences, the same for the second, and upon refusal to pay he was to be arrested by the Marshal General of the Fleet and be kept in custody till payment.

If he offended again he was himself to be brought before the Council of War " as a contemnor of order & discipline."

Here was a complete system which, had the Commonwealth lasted a little longer, might have been permanently part of the administration of justice in the Navy. It bears a remarkable resemblance to the system of the Regimental, District, and General Courts Martial which exists in the Army.

At the Restoration the whole of those Acts and Ordinances were swept away, and, indeed, it is only due to industrious search that within the last few years the Statute Law Revision Committee has been able to publish a fairly complete edition of the Ordinances and Acts of the Interregnum.

But the good work which had been done by the zeal of those responsible for the Navy during the existence of the Commonwealth was not entirely lost. The Parliament summoned by Charles II in substance re-enacted the Articles of War, and if the system of Courts Martial inaugurated by Monk and his friends was too democratic for the Royalists who came into power, it at least formed the framework of those sections of the Acts of Charles II which dealt with Court Martial.

Next, therefore, may be considered the provisions of the Act 29, Car. II, c. 33.

Under that Act the Lord High Admiral was given power to grant commissions to " inferior Vice-Admirals or Commanders-in-Chief of any squadron of ships to call and assemble Courts Martial consisting of commanders and captains." But no Court Martial was to pass a sentence of death unless it was composed of at least five captains, nor should any such sentence be executed (except in the case of mutiny), if the offence was committed within the narrow seas, without the leave of the Lord High Admiral, or if committed beyond the narrow seas, without the " order of the Commander-in-Chief of that fleet or squadron wherein the sentence of death was passed." The Judge Advocate of any fleet was given the power to administer

an oath to witnesses, but the members of the Court were not sworn, nor was the Judge Advocate. There was no limit to the number of persons who might be members of the Court, nor was there any provision similar to that contained in the last paragraph of Monk and Penn's instructions obliging all captains to attend when in sight of the Flag. There was no power to prevent the Court being composed of any officers whom the Lord High Admiral or the Commander-in-Chief might think fit to nominate. It was apparently not necessary that the captain's ship should be at the place where the Court Martial was held. Indeed, this question was expressly raised by Admiral Mathews at his trial in 1746. He objected to three officers whose ships were not present on the ground that, according to long-established practice, only captains whose ships were in the districts and limits of the command of the Flag Officer who presided at the Court Martial could sit thereat. The question was referred to the Admiralty, and decided against the contention of the Admiral.

This freedom of choice had curious results, for persons appear sometimes to have been appointed captains in order that they might be made members of Courts Martial.

Pepys, in his diary under date March 13, 1668–9, says :

> that which put me in a good humour both at noon and night is the fancy that I am this day made a captain of one of the King's ships, Mr. Wren having this day sent me the Duke of York's commission to be Captain of the Jerzey in order to my being of a Court Martial for examining the loss of The Defiance and other things, which do give me much mirth and may be of some use to me, at least I shall get a little money by it for the time I have it, it being designed that I must really be a Captain to be able to sit on this Court.

The Order appointing the Court of which Pepys was a member was signed by the Duke of York, then Lord High Admiral, and addressed to Sir William Penn.[1] It orders him to call a Court Martial of Commanders and Captains to inquire into the loss of the *Defiance*, and to proceed to the trial and conviction of all such persons as shall be suspected to be in any way guilty in the loss of the ship, to give sentence, and to cause such sentence to be executed accordingly. Penn is further ordered " to summon the several persons hereunder named to assist at the said Court Martial." There follow the names of twenty-six persons, all of whom were real sea officers except Pepys and Middleton.

Pepys sat at Courts Martial on March 19 and 25, but seems to

[1] *Memorials of Sir W. Penn*, p. 520.

have been alive to the evils of the precedent which had been set, for he "forbore to give judgment" in both cases. He gives his reason for doing so in his entry for the 19th, "it being to be feared that this precedent of our being made Captains in order to the trying of the loss of The Defiance . . . might hereafter be made evil use of by putting the Duke of Buckingham or any of those rude fellows that are now uppermost, to make packed Courts, by Captains made on purpose to serve their turns."

The fact that the members of Courts Martial in those days took no oaths to administer justice properly may have been the reason why the proceedings of the Court were not satisfactory. We find a vigorous protest from Pepys in one case in which the Commanders set themselves to ruin a purser who had brought charges of dishonesty against his Captain, and to "defend the Captain in all his rogueries be it to the prejudice of the King or Purser."

By a Statute of 1694 [1] a very short form of oath was prescribed for the members of a Court Martial, but this Act was repealed in 1745,[2] when the new form of oath was introduced much in the same form as that at present in use, but containing the following curious clause, which has now disappeared. After swearing to administer justice according to the laws in force for the government of His Majesty's ships, the oath proceeds:

> and if any case shall arise which is not particularly mentioned in any such laws I will duly administer justice according to my conscience, the best of my understanding, and the custom of the Navy in like cases—

a most dangerous provision, as it would seem to justify some of the fanciful findings which the Courts sometimes arrived at. By the same Act the Judge Advocate was required to take an oath in the prescribed form. This Act of 1694 contained another very curious provision enacted for a period of three years, and as far as I have been able to discover, never repeated. It enacted that all offences which might be committed against the articles of war might be tried by the Court of King's Bench at Westminster according to the Common Law of the Realm, but if any person was so tried, he was not to be tried again by Court Martial, nor if he had been tried by Court Martial, was he to be tried again by the Court of King's Bench.[3]

[1] 2 W. & M., c. 2, s. 4.

[2] 18 Geo. II, c. 35.

[3] It is interesting to note that the earliest legislation passed for the Australian Naval Service contained a similar provision which, however, is not now in force.

It is difficult to find any reasonable explanation of this, though possibly further investigation may throw light upon it. It may be, however, that questions had arisen whether a Court Martial had any power to try persons who had committed breaches of the Articles of War on shore.

Owing to the fact that it was held that, when a ship was lost or captured by the enemy, all pay ceased, and the Articles of War no longer applied, the men got quite out of hand in these circumstances, and discipline disappeared. Two Acts were therefore passed, in 1744 [1] and 1747,[2] which remedied this defect. The men's pay was continued, subject to their good behaviour, and they were made still liable to Naval discipline

> until regularly discharged . . . from His Majesty's Service or removed into some other of His Majesty's ships, or until a Court Martial shall be held pursuant to the Custom of the Navy in such cases to enquire into the causes of the loss of the said ships.

It seems to have been thought by some people that there must be a Court Martial whenever a ship is lost or captured, but these two Acts imposed no obligation, either on the Admiralty or on the Commander-in-Chief, to hold a Court Martial, nor in any way fettered the absolute discretion conferred on them. The object of the Acts was quite different. It was merely to continue discipline, and to relieve the crews of the great hardship which they suffered by their pay automatically ceasing when, after perhaps a most gallant and prolonged struggle, they had been defeated, either by the elements or the enemy.

In 1690 a curious question arose as to the powers of the Commissioners for executing the office of Lord High Admiral to issue Courts Martial Commissions, and a great protest was made by certain Noble Lords against the trial of Lord Torrington by Court Martial ordered by them, on the ground that only a Lord High Admiral had power to order a Court Martial. The Commissioners' power to do so was, however, established beyond doubt by the Act 2 W. & M., Sess. 2, c. 2, the passing of which caused fifteen Noble Lords and two Bishops to exercise their right to record a formal protest.[3]

During the reign of George II the question of the constitution of Courts Martial seems to have been the subject of much consideration, and was several times altered.

[1] 18 Geo. II, c. 39. [2] 21 Geo. II, c. 11. [3] McArthur, vol. i, p. 353.

The Act of 1744 gave the Admiralty power to grant commissions to any Flag Officers, Commanders-in-Chief of squadrons of ships, or Captains of H.M. ships to call and assemble Courts Martial, because, as the Act stated, " by reason of defects in the constitution and proceedings of Courts Martial great inconvenience was caused to the public service " and offenders escaped punishment.

The officer by virtue of whose powers the Court Martial was held should at no time preside thereat, but the President was to lay before him the proceedings of the Court together with the sentence or judgment therein. This Act was repealed in 1748, and by the new Act it was provided that no Commander-in-Chief of any fleet or squadron or detachment thereof should preside in *foreign* parts, but the officer next in command should hold the Court Martial.

The number was not to consist of more than nine or less than five persons. I am inclined to think that this reduction in numbers was due to the long time so many officers had been withdrawn from their duties by the Toulon Courts Martial, which have probably had a greater effect on the composition of procedure of Courts Martial than any other trials.

Provision was made, following Monk and Penn's system, for the Commander-in-Chief authorising an officer in command of a squadron on detached service to hold Courts Martial, or in event of his death or removal the officer upon whom the command should devolve, until the commander of the detached squadron should return to the Commander-in-Chief or come under some senior officer.

If five or more vessels met in foreign parts, the senior officer, though not in possession of a Court Martial commission, was empowered to hold Court Martial and preside thereat, so long as the ships remained together.

If there was any material objection to the officer next to the Commander-in-Chief presiding, the Admiralty or the Commander-in-Chief might appoint the third officer to preside.

The Admiralty was empowered to commission any flag officer or captain in any port in Great Britain or Ireland to hold Courts Martial in any such port.

So matters stood when, in 1749, all the Statutes to which I have referred were repealed, and a new Act was passed " for amending, explaining, and reducing into one Act of Parliament the laws relating to the government of His Majesty's ships, vessels and forces on sea."

The Articles of War were re-enacted, as were the other provisions of the Act of 1748, with certain alterations. The Commander-in-

Chief of more than five ships was not to preside thereat in foreign parts—if there were five or less, he was apparently to do so—but the officer next junior to him was to preside unless there were special reasons why he should not, in which case the third officer was to preside.

It was not the custom to issue Court Martial Commissions to Commanders-in-Chief within the narrow seas. Lord St. Vincent is stated, in the third volume of the *Naval Chronicle*, to have been one of the first officers in command of the Channel Fleet to receive such Commission, when it was said that it has not been usual to include the power of ordering Courts Martial in the Commissions for the Channel Fleet on account of the quick intercourse between that station and the Admiralty.

The power of the Admiralty to direct any flag officer or captain who should be in any part of Great Britain or Ireland to hold Courts Martial as necessary was limited to those who were first, second, or third in command there.

The maximum number was increased from nine to thirteen. Under the old Act there was no limit, and the regulations made in 1731, which were in force till 1806, gave the right to " the Captains of all of His Majesty's ships in Company which take Post . . . to assist thereat." The increase must have been very inconvenient, and we find Admiral Kempenfeld writing to Lord Barham in 1779[1] complaining of the interruption of work caused by continual Courts Martial, and suggesting a change which would enable several Courts Martial to sit at once in the same fleet.

There was no provision for the prisoner objecting to any member of the Court, but by the regulations no officer was to sit if he was personally concerned. This remained unaltered till 1824, when words were added providing that the Court was to decide whether any officer entitled by his rank to sit was personally concerned or not. It was not till the Act of 1860 that the right of the prisoner to object was expressly conferred on him and recognised by the regulations.

The Act contained a stringent clause inserted apparently to prevent scandal which had arisen under the former Act, to the effect that nothing should authorise the Admiralty or any Officer empowered to hold Courts Martial to direct or ascertain the particular number of persons of which any Court Martial should consist, but this was sometimes evaded by directing particular officers to proceed to the

[1] *Letters of Lord Barham*, vol. i, p. 300; *N.R.S.*, vol. xxxii.

place where the Court Martial was to be held, as, for instance, in the case of Sir Home Popham in 1807, where three Vice-Admirals and a Rear-Admiral were ordered to proceed to Plymouth to sit under the Presidency of Admiral Young, the Commander-in-Chief at Plymouth.

No member of a Court was allowed to go ashore or leave the ship till the sentence was given, but after the experience of some long Courts Martial, and especially that of Admiral Keppel (in whose case, owing to the state of his health, an Act [1] had to be specially passed to enable the Court, after the preliminary formalities had been gone through and the Court sworn on board ship, to continue the trial on shore), this provision was finally repealed shortly after the conclusion of the Admiral's trial in February 1779.[2] The members of the Court had made a pitiful appeal to the Admiralty, protesting against having been kept in "confinement for six and thirty days . . . greatly to the prejudice of our health." They beg for:

> the removal of our oppression so long and so justly complained of which we flatter ourselves their Lordships will more readily acquiesce in when it is considered that the Judge Advocate, who is a part of the Court, is at liberty upon every adjournment to retire while the Judges are obliged to continue in confinement however long it may be till sentence shall be given.[3]

The Court was not to be delayed by the absence of any member, so long as a sufficient number was present to compose the Court, but a member absenting himself, except in the case of sickness or other extraordinary and indispensable occasion, ran the risk of being cashiered. There was a clause similar to that which appears in the present Naval Discipline Act, limiting, except in certain special cases, to three years the time within which a Court Martial should take place, but there was not then, nor is there now, any obligation to hold a Court Martial at any particular time within those three years. In old days great injustice was sometimes done by indefinitely postponing the trial, and Delafons [4] cites the celebrated case of Captain Sutton, who was suspended and deprived of his command by Commodore Johnson for offences supposed to have been committed in an action with Admiral de Suffrein on April 16, 1781. The Commodore would not bring him to trial, but he was

[1] 19 Geo. III, c. 6.
[2] *Ibid.*, c. 17.
[3] McArthur, vol. i, p. 435.
[4] Delafons, p. 203.

sent under arrest from Cape de Verde Island to India, and thence to England, where, after a ten days' trial, he was honourably acquitted of the whole charge on December 11, 1783, two years and three-quarters after his original suspension. He afterwards brought an action against Commodore Johnson, which after two trials reached the House of Lords, and they decided the action would not lie.[1]

No substantial changes were made so far as the powers of the Admiralty or the Constitution and jurisdiction of the Courts were concerned until the Act of 1860. But certain alterations were made in the powers of the Courts Martial. In 1847 [2] an Act was passed in wide terms, enabling the Court in all cases in which the Court was by law authorised or required to pass a sentence of death, except of murder or sodomy, to impose such other punishment as the nature and degree of the offence should be found to require. This Act, now repealed, put the Courts in a more free position than they are to-day, for there are still offences created by ss. 1, 3, and 5 in which the death sentence is obligatory. By the same Act power was given to try cases of manslaughter, and by an Act of 1853 to try offences committed by persons subject to the Act in Dockyards and Victualling Yards.

In 1860 an Act which may be considered as the first edition of the present Naval Discipline Act was passed, followed by later editions in 1861 and 1864, the last-named Act being repealed in 1866 by the Act which, with certain amendments made from time to time and almost entirely administrative, is in force at the present time. No substantial change was made by any of these Acts in the constitution of Courts Martial, except that the former maximum of nine and minimum of five members was restored, that all officers of or above the rank of lieutenant, provided they are twenty-one years of age, are made eligible to sit as members. It is enacted that the President must be of or above the rank of captain, and provisions were introduced to secure that on the trial of a flag officer, the President should be a flag officer and the other members captains, or of higher rank, while for the trial of a captain, the President should be a captain or of higher rank, and the other officers, commanders or of higher rank.

A new Court was introduced during the war, which in some ways resembles the ship Court Martial of the Commonwealth period. It was called a Disciplinary Court, and was composed of three officers, of whom the President was a Commander or of

[1] 1 P.R., 544; 1 Bro. P.C., 76. [2] 10 & 11 Vict., c. 59.

higher rank, and had a limited jurisdiction over officers only confined to the trial of certain specified minor offences, and it was laid down that at least one of the members should be of the same relative rank as the accused. This enables Warrant Officers to sit as members, as was the case in the ship Court Martial during the Commonwealth. The power enabling the proper authority to summon this Court was given in order to avoid convening, for the trial of small offences, a Court Martial necessarily composed of more or less senior officers at a time when there might be important operations to be undertaken. It has not been continued since the termination of the war.

There is not now, and there never has been, any formal appeal from the decision of a Naval Court Martial, nor have the Courts of the country any direct power of reviewing their decisions; but the Admiralty has the power, except in the case of a sentence of death, which can only be remitted by His Majesty, to amend or annul a sentence. The only appeal is to the King, who, if appeal is made to him, can, as he did in Admiral Byng's case, refer any question of law which has arisen to the Judges for their opinion.

But in old days attempts were made to have decisions of Courts Martial reviewed in Parliament, the worst possible place for the review of the decision of a Court established by law. In Lord Torrington's case, for example, the House of Lords sent back a decision of a Court Martial, which had acquitted him, for re-consideration, but the Court adhered to their previous decision.[1] In other cases the House of Commons has attempted to interfere, but always without success. The Crown has interposed in many cases in favour of particular officers, and occasionally has disregarded the finding in favour of the accused, and punished him.

In one case, that of Sir John Munden, tried in 1702 for neglect of duty in not intercepting a squadron of French ships, a Court Martial held he had fully discharged himself of the charge, but the Queen required the proceedings to be laid before her, and, having considered all the circumstances, directed the Lord High Admiral to " discharge him from his post and command in the Royal Navy," and this was accordingly done.[2]

The Development of the Procedure.—Up to 1731 there were no general regulations dealing with the procedure of Courts Martial. In that year, for the first time, regulations and instructions relating to His Majesty's service at sea were established by His Majesty

[1] *Life of Sir John Leake*, vol. i, p. 39; *N.R.S.*, vol. lii.
[2] McArthur, vol. i, p. 111.

in Council. The Order in Council is set out in the copy in the Admiralty Library, and it is interesting to note that the King referred the regulations before allowing them to the Lords of the Committee of Council, who made certain amendments in them. Here we find the origin of the provision in s. 65 of the Naval Discipline Act, which gives effect to the general orders regulating the practice and procedure of Courts Martial, when approved by His Majesty in Council on a report of the Judicial Committee of the Privy Council, but not sooner or otherwise. Before these regulations there seems to have been no established practice. There appears to have been a Judge Advocate of each fleet, and power is given him to administer an oath to any person or witness in order to the examination or trial of any offences. I do not doubt that the regulations relating to Courts Martial stereotyped what was the usual practice in those days.

There are only ten Articles as against between forty and fifty to-day. The first provides that Courts Martial are to be held, offences tried, sentence pronounced, and execution done according to the Articles and Orders contained in the Act of 1661, and the second that Commissions or General Powers for holding Courts Martial are to be understood to be in force no longer than during the expedition, which was probably an echo of the old practice of commissioning Commanders-in-Chief only for the contemplated expedition. They are also, perhaps, an indication of the policy of the Admiralty to keep in its own hands the ordering of Courts Martial, except when the Fleet was despatched for some definite object.

There then follows a clause which states that Courts Martial are—

> always to be held in the forenoon (Courts Martial met at 8 a.m. in those days) in the most public place in the ship where all who would might be present, and the Captains of all of His Majesty's ships in company which take post were to have a " right " [not a " duty "] to assist thereat.

This must have been extraordinarily inconvenient, for there were often as many as twenty-five members. In the long series of trials arising out of the action off Toulon in February, 1743, the Court was composed of the Commander-in-Chief, Rear-Admiral, and twenty-four captains, and the four trials of which the proceedings have been published lasted from September 23 to November 7.

Art. 4 provides that all complaints at sea or in foreign parts are to be made in writing to the Commander-in-Chief, in which are to be

set forth the particular facts, with the place, time, and in what manner they were committed.

The next Article deals with the duties of the Judge Advocate. Before trial he is to examine the witnesses on oath, take down their depositions in writing, and show them to the Commander-in-Chief, who is to order him to send timely before trial an attested copy of the charge or accusation to the party accused. At the trial he is to take minutes of the proceedings, to advise the Court on the proper forms, and to deliver his opinion in any doubts or difficulties in their methods which may arise during the trial.

Then by Art. 7, after the evidence is concluded and the parties have been heard, the President is to put the several questions agreed to by the Court, and the members are to vote, juniors first, up to the President, who is to collect the numbers and settle the determination of the Court according to the number of voices.

The Judge Advocate is to draw up the sentence of the Court, which being approved, all persons are to be admitted, and the party accused being present, the Judge Advocate is by direction of the President to pronounce the same. He is afterwards to send the original sentence and affidavits and his minutes to the Secretary of the Admiralty.

There in outline is the substance of our procedure to-day. It is an outline only of the then actual practice, but, after having examined the original minutes of many Courts Martial, and such printed records as I have been able to secure, I think I have been able to re-construct with fair accuracy what actually happened.

Before the trial the Judge Advocate or his Deputy took the depositions of the witnesses on oath. Where there was a very large number of witnesses, this seems to have been done very perfunctorily, for I find in one case the Court complaining that the depositions were all exactly the same. "The Judge Advocate acquainted the Court that, before taking their depositions, he asked them the same set of questions, and that when the witnesses' answers were to the same effect, their depositions were drawn out in the same words." [1]

The result may be imagined. The witness may be supposed to have said something he never intended, and in the same trial I find a man who, on being taxed with contradicting his deposition, excused himself on the ground that he might read it, but not digest every part of it.

[1] Captain Ambrose's Trial, p. 151; *Naval Trials*, London, 1746.

The trial began by the reading of the Commission of the Commander-in-Chief and the General Warrant to him for holding Courts Martial, and a warrant, if there was one, for the particular Court Martial.

This warrant seems, at all events in the early part of the eighteenth century, not infrequently to have covered several cases. The warrant for holding the Toulon Court Martial applied to all the officers to be tried, and the order in which the trials were to be taken was laid down, though as a matter of fact Admiral Lestock was tried on a fresh warrant.

Even the judgment or sentence often included several cases; for instance, I find in one case a lieutenant sentenced for negligence and a cook for insolence [1]; in another, a boatswain was tried for murder and a captain [2] of another ship tried and sentenced for making false entries in his books. Instances of the kind might be multiplied indefinitely.

After reading the above-mentioned documents the Court (after the Statute of 1691) was sworn, and the trial begun by reading the charge of accusation. There was no regular form for this, and in most of the cases which I have seen there was no regular charge at all, but an information sometimes sworn, sometimes merely in the form of a letter, stating the facts alleged by the complainant. The complainant might be anyone, not necessarily in the Service. In one case an ambassador to Spain and Portugal made the complaint; in another a widow complained of the murder of her son, and in a third the officers of Plymouth Yard made a complaint against the carpenter of a ship. In all these cases the complaint was sent to the Admiralty and endorsed. "To be tried by Court Martial," and sent with the warrant to the officer who was to preside. No reference, direct or indirect, was made to any Article of War, and the prisoner did not know till sentence was pronounced what Article of War he had broken. The sentence ran, after setting out sufficient facts: "He (the prisoner) falls under such and such an Article or Articles." This practice appears to have had a certain advantage in that it enabled the Court to find a man guilty of the breach of some Article for which the penalty was not necessarily death, and enabled it to pass a less sentence.

At this time the line between a Court of Inquiry and a Court Martial was very indefinite. Indeed, I think it may be said that every Court Martial was really a Court of Inquiry rather than a

[1] R.O. Ad. In. Letters, vol. 5262 [2] Ibid., vol. 5264.

Court of Criminal Jurisdiction. Sometimes, indeed, the same officers seem to have acted in both capacities.

Early in 1703–4, the *Vanguard* ran ashore in the Medway, and on February 1 a Court Martial was held on board the *Boyne* and "enquiry was made into ye occasion of ye running on ground of H.M.S. Vanguard." The Court Martial came to an end with the sentence by which the boatswain was fined two months' pay for not being on board at the time of the grounding, the cook was fined one month's pay for the same offence, for, though sick, he should have acquainted the proper officer of ye guard of his being unable to get on board." The gunner was acquitted because "it was his free week to be on shore." The sentence then proceeds:

> Then the Commander-in-Chief and other officers present did proceed to examine into what was done by the officers and workmen of Chatham Yard upon the occasion of the Vanguard being on ground in Chatham harbour, and, particularly of the hole cutt in her bottom to sink her, and did make the following report of that matter.[1]

All this is in one sentence, and not until the end of the report "on the hole cutt in her bottom" did the Court and Judge Advocate sign.

Numerous instances might be given of Courts Martial which were really Courts of Inquiry, but the above will be sufficient to illustrate the point.

There was no prosecutor, as we understand it now. It was the duty of the Judge Advocate to collect the evidence and to act as prosecutor in all ordinary cases till well on in the nineteenth century, but in cases of great importance an outside prosecutor was appointed.

In the series of Courts Martial arising out of the action off Toulon, to which I have already referred, which were held in consequence of a Resolution in the House of Commons, the House in its address to the Crown asked that the proper person should be appointed to collect the evidence and lay it before the Court. Two lawyers were accordingly appointed prosecutors by warrant of the Admiralty. They presented themselves and were received with much disfavour. They were not allowed to conduct the prosecution, but were "allowed a side-table to sit at in order to hear what passes," and after the examination of the witnesses by the Court were to be allowed to submit in writing such questions as they thought necessary, in order to be laid before the Court.

This led to an amusing passage. On October 6, after the Courts

[1] R.O. Ad. In. Letters, vol. 5264.

Martial had been sitting for a fortnight, the President communicated to the Court a letter he had received from the Secretary of the Admiralty, which said that great offence had been taken by the public at the refusal to allow the lawyers to ask questions of the witnesses in the course of the examination, and saying that these gentlemen attended in pursuance of an address of the House of Commons, and an order from His Majesty directing them to prosecute in his name, and that they were in the same position as an officer who complains of another who is permitted to ask questions *viva voce* by the mouth of the President.

The Court took the request that the lawyers should be allowed to ask questions *viva voce* into consideration and unanimously refused it, and directed the Judge Advocate so to inform the Secretary of the Admiralty, stating their unanimous opinion that—

> It [only allowing written questions to be submitted] is fully sufficient to answer the purpose of coming at the truth ; that it takes less time than if they were permitted to interrogate *viva voce*, and that it does not at the same time lay the Court open to any innovations of law-forms, and therefore they cannot agree to alter the present method as they think that doing so might be introductive of many real inconveniences and infringe on the liberties of Courts Martial.[1]

This little passage of arms is of importance in that it shows that the Courts Martial of the day considered that they alone were the persons to get out the evidence of the witnesses, and emphasises the view that they were Courts of Inquiry rather than Legal Tribunals to try specific charges.

It does not appear that any serious objection was ever afterwards taken to lawyers being instructed to prosecute, and, as a matter of fact, the prosecution in other great Courts Martial (for example, those on Admiral Byng, Admiral Calder, Sir Home Popham, Lord Gambier, and Admiral Harvey) the prosecution was conducted by the legal officers of the Admiralty.

Though in these great cases the Court seems to have put up with the presence of lawyer prosecutors, their presence was not looked on with favour, either by the Court or prisoner. As late as 1817 I find in the printed report [2] of the trial of a certain Lieutenant Low, who was brought before a Court Martial on a charge exhibited by Mr. Spain, of Cowes, of cruel and tyrannical conduct to his son, that Mr. Spain asked that he might have the assistance of some solicitors

[1] Captain Burrish's Trial, p. 148 ; *Naval Trials*, London, 1746.
[2] *Defence of J. McArthur Low*, Portsmouth, 1817.

in the conduct of his prosecution. The Court was cleared for ten minutes, and then the President acquainted the prosecutor that he might have the assistance of "Council," but they were not to speak in Court.

But to resume after this digression. The trial proceeded and the witnesses were called; first of all their depositions were read, a proceeding not likely to arrive at the truth when the facts were in dispute; then the Court examined them and the prisoner was allowed to ask questions. The same proceeding was followed in the case of a prisoner's witnesses; his witnesses also may have made depositions before the Judge Advocate.

There appears to have been no regular means by which either the prosecutor or the accused could secure the attendance of any witness. In the case of a charge arising out of some occurrence in a ship there would probably be no difficulty, for his attendance could be secured by order of the captain. In cases where witnesses were required from several ships, application seems to have been made to the Admiralty, for I have found several letters to the Secretary of the Admiralty asking that witnesses might be ordered to attend.

By the Act of 1745 [1] the Judge Advocate was authorised and required to collect the evidence in support of the charge against the accused, and to inform the Court, and prosecute in His Majesty's name. And for that purpose power was given him by writing under his hand to summon any persons he shall be informed, or have reason to believe, can give any material evidence in support of the charge. Anyone who refused to appear at the time or place mentioned or refused to give evidence was to forfeit one hundred pounds, to be recovered in any one of His Majesty's Courts of Westminster, of which half was to go to His Majesty and half to the informer. This was wide enough to include civilians, but was limited to witnesses for the prosecution. I have not yet been able to confirm my suspicion, but I am inclined to think that this power conferred on the Judge Advocate, which lasted quite a short time, must have been given in preparation for the Toulon Courts Martial, with regard to which party feeling ran very high. Be this as it may, it was repealed in 1748, and nothing was introduced in its place.

The Act of 1749 [2] reaffirms the right of the Judge Advocate to administer an oath to witnesses, but curiously enough does not confer on him any right to summon witnesses, even for the prosecu-

[1] 18 Geo. II, c. 35, s. 1.

[2] 22 Geo. II, c. 33, s. 20.

tion. Instead of a penalty applicable to all persons who refuse to attend and give evidence, recoverable in any of His Majesty's Courts at Westminster, power is given to the Court to punish " any *person in the fleet*, called to give evidence," who refuses to do so or prevaricates or behaves with contempt, by imprisonment not exceeding one month in the last case, and three months in the two first.

The evidence being concluded, the prisoner was allowed to address the Court, but was not, as a rule, allowed anyone to assist him, though Courts seem to have granted this privilege in particular cases where the prisoner was suffering from some disability of sight, hearing, or what not. In other cases, if the prisoner desired to have the assistance of any person, such person came into Court as one of the audience, and from his place there made such suggestions to the accused as were possible. It seems to have been doubted whether the accused could be allowed to put in a written defence, but this was soon settled in his favour, and has been the rule ever since. His defence seems to have come after the conclusion of his evidence, not before, as is the case to-day.

The defence being finished, the Court proceeded to consider its finding. The means of doing so seem to have been devised in order to give the greatest possible opportunity for obstruction. First a question was proposed; any member could object to it, and thereupon a division was taken as to whether it should be put. If carried in the affirmative, the question was voted on and the decision became the decision of the Court. All the necessary questions having been put and decided, the sentence was drawn up, and the wording of it in an important case often led to many divisions. The sentence was in the form of a finding of facts, or when definite charges were made, as in cases of important Courts Martial, a finding on each charge, a decision as to which Article of War the accused " fell under " and a decision as to what penalty should be inflicted.

Having now described, as well as I can, the procedure of Naval Courts Martial in the eighteenth century, I think the most convenient way of dealing with the gradual development of the practice will be to take the different persons and subjects concerned, and trace their history.

First, then, the prisoner, and what specially concerns him. After Drake's trial of Burrough and the officers and men of the *Golden Lion* I am not aware that there ever was a Court Martial without a prisoner actually present. But it is worth noticing, in this connection, that there are in the old records numbers of cases in which a

Court Martial to inquire into the loss or capture of a ship, and to try the officers and men for their conduct on the occasion, the captain who had been killed in action, or died since, is solemnly acquitted, and there are many of these cases in which all the officers and men were not present.

Compared with the present-day practice, little or nothing was done to protect the prisoner. To give him notice "timely before trial" of the charge or accusation seems to have been considered all that was necessary. As I have already pointed out, he had no right to anyone to assist him, and even when he did receive help in the manner I have indicated, the person giving him assistance was not officially recognised.

By degrees, however, no doubt as the practice of the Civil Courts relaxed in favour of the prisoner, the Courts, on request being made to them, allowed some person to be near the prisoner to help him, but the Courts evidently jealously preserved their right to decide whether or not the prisoner should have any help at all.

The possible existence of such a person was officially recognised for the first time in the regulations of 1879, where reference is made to "the prisoner's friend or adviser should there be one," but no right to have such assistance was conferred on the prisoner till 1883, when a new Court Martial chapter was issued and embodied in the revised edition of the King's Regulations and Admiralty Instructions issued in 1884. By them it was officially recognised for the first time that a prisoner was to have ample opportunity to prepare his defence, and of consulting his friend or legal adviser, and for having a person to assist during the trial, whether officer, legal adviser, or any other person approved by the Court, the right of the Court to have a say in the matter being still preserved.

The words "approved by the Court" disappeared in 1899, and a man is now free to have anyone he likes to assist him without regard to the Court's views as to his desirability.

Then, as to the charge, as has already been stated, this might be anything from an ordinary letter to a sworn information, or a formal charge. But by degrees the "innovations of law-forms" to which the Admirals and Captains objected so strongly in 1745 gradually crept in, and the charges become in all cases more definite till in 1879 it is laid down that the prosecutor is required to describe the offence in the very words of the Act, to the great advantage of everyone concerned.

Next as to the witnesses, there is, of course, not much scope for

change in this respect, though gradually the rules of evidence accepted in the Civil Courts seem to have been more strictly applied in Courts Martial.

The reading of the witness's deposition before he gave his evidence had ceased at the beginning of the nineteenth century. In 1806 the Court was given power to recall any witness as often as it thinks proper, and to call any witness though not desired by the accuser or accused, " it being the duty of the Court to obtain the fullest insight they possibly can into the matter before them "—evidently a recognition of the position of the Court as an inquiring as well as judicial body.

The Court seem to have used this power as a means of completing the case for the prosecution, but as the view that a Court Martial was a judicial body only gained ground owing to the greater use made of the power of summoning Courts of Inquiry, it seemed desirable to limit this power. Accordingly, in 1844 the words were added, " but no such witnesses are to be examined as to any new facts."

Lastly, reference may be made to the prosecutor and Judge Advocate. It is curious that it should be necessary to deal with them together, but for two centuries at least their functions were so mixed up that to treat them separately would involve an immense amount of repetition. The exceptional case in which an outside prosecutor was allowed has been mentioned already.

The Judge Advocate was originally a person appointed either by the Admiralty or the Commander-in-Chief of a fleet. It appears that, at one time, there was a Judge Advocate in each fleet of which the Commander-in-Chief held a Court Martial Commission. He went to sea, and, according to an establishment of cabins set out in Mr. Tanner's introduction to his catalogue of the Pepysian manuscripts, he had one of the " two backhead cabins on the Quarterdeck," of a first or second rate, allotted to him. But in time the only Judge Advocate was the one appointed by the Admiralty. On February 2, 1652–3, the Admiralty Committee ordered " that there be one Advocate appointed to attend the Fleet, and that there be allowed him 8*s.* by the day." [1]

The Judge Advocate so appointed seems soon to have assumed, after the manner of those days, the right to perform his duties by deputy, though he usually appeared in person in important cases, and occasionally both he and his deputy were present. He ap-

[1] R.O.S.P. Dom. I, 35, fol. 11.

pointed deputies in most of the principal naval ports, and these gentlemen are described as persons "bred to the law" and officiated at the lesser Courts Martial held in naval ports, and no practical difficulty seems to have arisen in their cases.

But in the fleet matters were different. In the absence of the Judge Advocate and his deputy the Court was by statute empowered to appoint someone in his place. Observe it was the Court who had to appoint, and the Court did not come into existence until it was actually assembled. But certain duties as to the collection of evidence, informing the prisoner and so on, had to be performed by the Judge Advocate before the trial began. Accordingly the practice crept in of the officer who was going to be President appointing someone Deputy Judge Advocate. This was quite illegal, and sometimes led to trouble. Delafons gives an instance of a case in which he was appointed Deputy Judge Advocate by the Commander-in-Chief in the West Indies in 1766. Previous to the assembling of the Court, he took the depositions on oath in accordance with the regulations, and they were referred to, but not read in Court, when the President, Sir John Lindsay, "expressed a strong sense of the impropriety of such conduct which he reprobated in very forcible language." [1] Notwithstanding the forcible language, however, the practice seems to have continued, but it was not until 1860 that any statutory power was conferred on the officer who was to be the President of the Court to appoint any person to officiate as Judge Advocate at the trial.

The duty of the Judge Advocate to act as prosecutor disappeared very gradually. In the editions of both McArthur's and Delafons' books of Courts Martial published after the revision of the regulations in 1806, the Judge Advocate is said to be the prosecutor, though the obligation to take the depositions does not appear in these regulations. In the 1824 edition of the regulations it is laid down that if no prosecutor is present the Judge Advocate "shall conduct the proceedings on the part of the public." This provision did not disappear for a long time. In the 1884 edition it is at last provided that the Judge Advocate is not to act as prosecutor; the captain or executive officer of the offender's ship is to act in that capacity, but if for any reason this is impossible, the Court and Judge Advocate must ask such questions as will bring the case before the Court in the fullest manner. Now the convening authority has in all cases to appoint a prosecutor, if the captain or executive officer

[1] Delafons' *Naval Courts Martial*, p. 158.

cannot act, and the Judge Advocate's right of asking questions is now really confined to elucidating points which are not clear.

In another direction fresh duties were imposed upon the Judge Advocate. He had originally to take minutes of the proceedings. Only in the great Court Martial does the evidence appear in the records in the form of question and answer. But in 1844 it was provided that he should take down in writing the evidence of each witness, and read the same in his hearing to the Court when requested to do so; his responsibility, notwithstanding the recent introduction of shorthand writers, remains the same.

The modern procedure of a Naval Court Martial was appropriate enough for a Court of Inquiry, but was not really suitable for a Court of Criminal Jurisdiction. At a time when, in the Criminal Courts of the country, the wrong spelling of a name or the misdescription of an Article, so strict were the rules of pleading, was sufficient to upset an indictment, naval Courts Martial were little more than a Court of Inquiry in which the decision as to what offence had been committed was the last act of the Court, except the sentence.

This has in course of time been completely changed, and in all essentials the procedure of a Court Martial differs little from that of an ordinary Criminal Court. Indeed, in some respects it is more favourable to the accused. He is now entitled, from the moment when his trial is decided on, not merely to the assistance of the officer of his division, if he be a rating, but in every case to the opinion of the Judge Advocate on any question of law arising.

ADOPTION AMONG THE MAORIS OF NEW ZEALAND.

[*Contributed by* F. O. V. Acheson, LL.M., *Judge of the Native Land Court and Native Appellate Court of New Zealand.*]

The prevalence of the custom among the Maoris of adopting children was due to two main causes: firstly, their extreme fondness for children; and, secondly, their passionate desire to strengthen or build up their sub-tribe or tribe.

The Maori custom of adopting children is a very ancient one, and it has been fully recognised by the Courts and Parliament of New Zealand. Owing to modifications introduced by the Courts and to recent legislation by Parliament, it is now necessary to deal with the ancient custom and the modern law separately.

The limited space at our disposal permits of but brief summaries being given.

The Ancient Custom.—The rules which from time immemorial governed the custom of adoption among the Maoris were authoritatively and briefly laid down by the Native Appellate Court of New Zealand in certain Judgments delivered at Hastings on June 19, 1895, in the cases of the Succession to Te Awaawa and others.

These rules are given below—together with the comments of the writer.

(1) "Complete adoption would be where the child was taken in early infancy, and lived with its adopting parent up to marriage or manhood."

An instance of complete adoption was mentioned in the Judgment of the Native Appellate Court, delivered at New Plymouth, on October 29, 1906, *in re* the Succession to Roera Rangi, deceased. The Court referred to the case of a certain native woman named Ngarongo Kahu, who had been adopted in early infancy by Roera Rangi in accordance with Maori custom. Ngarongo had not only lived with Roera until marriage, but even had continued to do so

after her marriage. Her continued residence with her adoptive parent did not, however, entitle Ngarongo's children to be considered the adopted children of Roera Rangi. The Court below had held that these children were entitled to a share of Roera's estate, but the Appellate Court overruled this decision, and held that, although Ngarongo herself had been adopted, yet none of her children had been adopted by Roera, and so the children had no claim to a share in the estate.

(2) "WHERE THE ADOPTION WAS NOT OF THE COMPLETE CHARACTER ABOVE MENTIONED, THE SURROUNDING CIRCUMSTANCES WOULD HAVE TO BE TAKEN INTO CONSIDERATION IN DETERMINING THE RIGHTS, IF ANY, OF THE ADOPTED CHILD."

Thus, adoption might be inferred where an orphan lived in the same *kainga* (or native village) and in the same house as the supposed adoptive parent, who provided such orphan with maintenance and support. The same inference might be drawn under similar circumstances where the child was, with its parents' consent, transferred from their custody to that of the alleged adoptive parent. (See *in re* Succession to Roera Rangi, deceased, Native Appellate Court, New Plymouth, 1906.)

(3) "IT DOES NOT APPEAR THAT ANY SPECIAL CEREMONIES OR FORMALITIES WERE OBSERVED UPON THE ADOPTION BEING MADE. IT WOULD BE SUFFICIENT THAT THE ADOPTED CHILD BE GENERALLY RECOGNISED AS SUCH."

In the same case it was held that there was good authority for believing that an ancient Maori adoption was a public act, known to and approved by at least all those members of the *hapu* (sub-tribe or family) with whom the adoptive parent resided, and who, on the death or inability of the adoptive parent, might themselves become charged with the maintenance and support of the child. The Court held that enough of the old custom still remained to justify it in looking with grave suspicion on an alleged adoption which was not well known throughout the neighbourhood where the adoption was supposed to have taken place.

(4) "THE ADOPTED CHILD WOULD ALMOST INVARIABLY BE A RELATIVE BY BLOOD OF THE ADOPTING PARENT."

It was one of the main points of tribal policy in each tribe among the Maoris that no strangers or members of other tribes

should be allowed to obtain rights to land belonging to that particular community. A tribe would often welcome strangers and give them land provided they would join forces with the tribe and give up all connection with any outside community. So, also, when a woman married a man of another tribe, she would lose her rights in any land under the sway of her old tribe if she left her tribe and lived with that of her husband. The Maoris recognised that, if members of an alien tribe were allowed a footing in the land belonging to a particular tribe, there would soon come quarrels that would inevitably involve the tribes in war.

It is not surprising, therefore, to notice that tribal policy plays its part also with regard to *adoption.* In his evidence before the Native Land Court *in re* the Karamu Reserve, Henare Tomoana of Te Waipatu, Hawkes' Bay, testified that, if *strange* children were adopted, the *tribe* would object to their being allowed to succeed to the lands of their foster parents.

The root of the matter was examined by Judge Edgar in the course of his expression of opinion in 1908 on the Native Custom of Adoption (see *App. to Journals of House of Representatives,* 1908, vol. iv, G. 5). After quoting with approval the judgment of the Appellate Court in the case of Te Awaawa, deceased, to the effect that a child adopted will almost invariably be a relative *by blood,* he went on to say : " It is to be remembered that the main idea at the root of *most* native customs has been the *strengthening and consolidating of the tribe.* The adoption of a child belonging to an alien or strange tribe can hardly be said to conduce to such strengthening or consolidating of the tribe of the adopting parent. Hence the rule above referred to."

Judge Edgar went even further, however, and seemed to think that *relation by marriage* would permit of an adoption being allowed. He held that if a child were so related to the adopting parent by marriage it would be in accordance with Maori custom to allow an adoption. The judge considered that such a case might be looked on as somewhat similar to the taking of a *wife* from an alien or strange tribe. The children of such a wife would be members of the husband's tribe (except such as might return to the tribe of the wife).

On the general question of the adoption of a child belonging to a stranger tribe, the opinion of Judge Jones is equally emphatic (see *App. to Journals of House of Representatives,* 1908, vol. iv, G. 5) : " Whatever the other essentials of an adoption by Maoris,

I take it that it was a guiding principle that the party adopted should not be of a stranger tribe. To hold otherwise would be to give to the individual a latitude which would not be claimed by nor permitted to even a substantial part of a tribe."

(5) "IF THE ADOPTION WERE MADE WITH THE CONSENT OF THE 'HAPU,' OR TRIBE, AND THE ADOPTED CHILD REMAINED WITH SUCH TRIBE OR HAPU, IT WOULD BE ENTITLED TO SHARE THE TRIBAL OR HAPU LANDS."

The proper adoption of a child by a member of a hapu, or tribe, gave to such child full rights of succession to its adopting parent's interests in lands, the adopted child being treated on an equality with the children of the body of such parent. Similarly, the consent of the hapu, or tribe, given to any adoption was a public recognition that the adopted child was thenceforth to have its full rights as a member of such tribe, or hapu, and, as a member, it would be entitled to its share in the tribal or family estate.

Tribal policy, however, did not permit an adopted child to retain any interest in the lands of the hapu, or tribe, unless such child remained with the tribe, or hapu, and bore its share of the burdens attaching to its position. The main idea in allowing adoption at all was that the tribe should be strengthened, not weakened.

(6) "UNDER SUCH CONDITIONS (AS ABOVE MENTIONED) THE ADOPTED CHILD WOULD BE ENTITLED TO SUCCEED TO THE WHOLE OF THE INTEREST OF THE ADOPTING PARENT."

There seem to have been no half-and-half measures about the Maori customs with regard to adoption. If the adopted child had any rights at all, he had the full rights which a child of the body would have.

Thus, the granting of a mere life interest in the estate of a deceased native would not satisfy the claim of an adopted child of such native.

In the case of *in re* the *Karamu Reserve* and other Blocks, Succession to Mere Taki, deceased, the Native Land Court had made an order, giving the adopted child, Hinetauaraia, a life interest only, with remainder over.

On an appeal before Chief-Judge Seth-Smith and Judge Jones, the Native Appellate Court ruled that the award of a life interest

was not in accordance with Maori custom. Judgment was therefore given in favour of the right of the adopted child to succeed to the whole estate (date of judgment, January 31, 1905).

"The adoption of children is an ancient Maori custom, and it conferred *full rights*" (per Judge Mair, see *App. to Journal of House of Representatives*, 1908, vol. iv, G. 5).

(7) "IF THERE WERE NO NEAR RELATIVES, AND THE ADOPTED CHILD HAD DULY CARED FOR THE ADOPTING PARENT IN HIS OLD AGE, HE WOULD SUCCEED TO THE WHOLE OF THE INTEREST OF THE ADOPTING PARENT."

In re the Owhaoko D, No. 6, and Rangipo-Waiu Blocks (Succession to Te Awaawa, deceased), the Native Appellate Court (Judges Scannell and Mair) held that the adoption of one Pura Rora by Te Awaawa was such as to exclude all except "near relatives" from sharing in the succession, and, there being no "near relatives" of the deceased native, judgment was given in favour of the adopted child accordingly.

In another appeal case, that of the Otuarumia and other Blocks, the Native Appellate Court (Chief Judge Davey and Judge Scannell) went even further. The point raised on this appeal was whether a person who had been found by the Court below to be entitled to succeed as *tamaiti whangai* (or adopted child) to the estate of a deceased native was, in the absence of *children of the body* of deceased, entitled to the whole of the estate as against all other relatives. The Appellate Court, in giving judgment on July 16, 1897, held that it was so entitled, and that the adoption placed the adopted child on the footing of a child of the deceased. (The writer has followed this rule in quite a number of cases.)

So also in the case of the Appeal of Ihakara te Raro (*in re* Motukawa, No. 2 Block), the Appellate Court held that the Court below had been justified in awarding the interest of Maata Te Kohiti, deceased, to an adopted child to the exclusion of the next-of-kin, the deceased having left no issue.

In giving his views on the ancient Native Custom of Adoption, Judge Edgar in 1908 (see *App. to Journals of House of Representatives*, 1908, vol. iv, G. 5), referring to the decision in the Otuarumia case, stated that he was not clear that it was in accordance with native custom that an adopted child should always take to the exclusion of near relatives, such as an uncle or a brother (of the deceased).

(8) "IF THERE WERE NEAR RELATIVES, THE ADOPTED CHILD WOULD SHARE IN THE SUCCESSION."

It has already been shown (*supra*) that adoption conferred on the adopted child the full rights which a child of the body would have. These full rights necessarily included the right to share in the succession to the interests in land of a deceased parent. An example may be cited in the case of the Succession to Reihana Wahapaukena, deceased (*in re* the Karamu Reserve, judgment of the Appellate Court given at Hastings, June 19, 1895).

(9) "THE ADOPTED CHILD WOULD LOSE HIS RIGHTS IF HE NEGLECTED HIS ADOPTING PARENT IN HIS OLD AGE, OR CEASED TO ACT WITH, OR AS A MEMBER OF, THE HAPU, OR TRIBE."

Where an adopted child ceased to act with, or as a member of, the hapu, or tribe, he would lose his rights under the adoption. In other words, adoption was capable of being revoked.

An interesting example of this is revealed in the decision of the Native Appellate Court (Judges Seth-Smith and Wilkinson) given on October 1, 1904, in the Appeal *re* the Maungatautari, No. 5A and other blocks.

The Native Land Court below, in its judgment on August 8, 1896, had awarded an interest equal to one-half of the estate of Hakiriwhi, deceased, to one Punia Parata, as the adopted child of the deceased native.

On appeal, the Appellate Court found that the relationship in the nature of adoption which had existed between Hakiriwhi and Punia had come to an end some time before the death of the former native. Punia had returned to her own people, with Maori ceremonial, and in accordance with Maori custom, and had ceased to be a member of or to act with the hapu of Hakiriwhi. She had married a European without taking any steps to obtain Hakiriwhi's consent, and from that time till the death of Hakiriwhi she had done nothing to suggest that she regarded herself as his adopted child. Although Hakiriwhi had several times begged her to go and see him, she had not done so. She had thus forfeited her claim to a share in the estate of the deceased, and the Appellate Court accordingly held that the adoption had been revoked, and that the whole estate must go to the next-of-kin.

The decision of the Appellate Court in the above case was quoted with approval (see *App. to Journals of House of Representa-*

tives, 1908, vol. iv, G. 5) in 1908 by Judge Edgar, to whom, along with other judges, the Chief Judge had referred various questions affecting the Native Custom of Adoption. Judge Edgar agreed that the right of an adopted child to succeed was not absolute. An adopted child (said the judge) was liable to lose his right to succeed if he failed in his filial duties to the adopting parent, but that, if he did not so fail, he would share equally with the other children (if any).

(10) "THE RIGHTS OF ADOPTED CHILDREN, AS ABOVE SET OUT, MIGHT BE MODIFIED IF THE ADOPTING PARENT MADE AN 'OHAKI' (OR VERBAL MAORI WILL)."

In olden times Maoris frequently disposed of their rights in land by making their wills in native fashion, and such wills applied not only to their personal property, but also to such limited rights in land as may have existed by virtue of use and occupation.

The question of whether an ohaki was or was not necessary came up before the Native Appellate Court (Judges Scannell and Mair) in the case of *in re* the Owhaoko D. No. 6, and Rangipo-Waiu Blocks (Succession to Te Awaawa, deceased). This was an appeal from a decision of the Native Land Court, given on August 7, 1895, and the appellant claimed that an adopted child had not a claim to the whole of the land unless the adopting parent had so devised in his or her favour by a will, or an ohaki.

This argument the Appellate Court held to be one which it could not entertain. The Court ruled that the right by adoption did not require to be supported by a will, or an ohaki; if it did, *adoption in itself would have no effect.*

In re the Succession to Renata Kawepo, deceased, in the Awarua No. 1, Kohurau No. 2, and Rangipo-Waio No. 1 Blocks, the Appellate Court (Chief Judge Davey and Judge Scannell) held that any presumption of intention on the part of the deceased to confer any right to succession which might otherwise be deducible from the fact of the adoption was, in its opinion, conclusively negatived by the terms of the will of Renata Kawepo. Judgment was therefore given in favour of the next-of-kin.

On the whole, we are inclined to agree with the view that an ohaki was not necessary in order that an adopted child might claim to succeed, but that, if an ohaki were made at all, it might modify the rights of such adopted child or sweep them away altogether.

To hold that an ohaki (or verbal Maori will) was always necessary, would be, in effect, to hold that there was no such right at all as the ancient Maori right of adopted children to succeed to the interests in land of their adopting parent. Every such right to succeed would be derived, not by virtue of the claims under adoption, but by virtue of a definite devise or bequest under the ohaki or will of the deceased parent. If such a state of things had really existed under the ancient system of Maori tenures it is inconceivable that the natives would have allowed the custom of adoption to exert that widespread influence on rights to land which it has undoubtedly exerted for so many generations. The evidence in support of claims to land under rights derived from adoption is too overwhelming to permit that we should deny to adoption its claim to rank as one of the sources of title to interests in land among the Maoris.

Certain further questions have from time to time come up for decision before the Courts.

In re Wairau, Block XII, subdivision 13, and other lands (Succession to Heni Hekiera, deceased), the following points had to be decided by the Native Appellate Court (Judges Edgar and Palmer) sitting at Spring Creek:

(*a*) Was an adopted child entitled to succeed to the estate of his foster-sister on her death?

(*b*) Were the adopting parents entitled to succeed to the estate of the child they had adopted, on the death of such child?

The Native Appellate Court was emphatically of the opinion that there never was any ancient native custom of succession under either of the conditions named. The Court, however, considering it equitable that adopting parents should be entitled to succeed to the lands of the child whom they had adopted, but who had predeceased them, saw no reason why such a rule should not be incorporated into the *present native custom* of succession. An order was accordingly made in favour of the adopting parents.

In the same case, the Appellate Court also expressed the opinion that the claim of a half-brother, as regards interests derived by the deceased through the common parent, was to be preferred under the native custom of succession to any claim by the adopting parents.

In various cases which have come before the Courts, relating

to adoption, importance has been attached to the *intention* of the adoptive parent in adopting a child.

Thus, *in re* the Karamu Reserve, Succession to Mere Taki, deceased, the Native Appellate Court (Chief Judge Seth-Smith and Judge Jones). in giving judgment on January 31, 1905, held that the circumstances attending the adoption of one Hinetauaraia were such that the Court was satisfied that it was the intention of Mere Taki that her adopted child should take the place of her dead child, and that, whatever the rights of the true child might have been, the adopted child should have the same. Judgment was accordingly given in favour of the right of the adopted child to succeed to the whole estate.

The Appellate Court, however, went on to say that it regarded the intention of the adopting parent as only one of the determining elements in cases of this kind, and not as a necessary ingredient in all cases.

The Existing Law as to Maori Adoptions.—The existing law governing adoptions among the Maoris is set out fully in Part IX of the Native Land Act, 1909 (No. 15), which deals exclusively with the adoption of children by natives.

Its chief provisions are briefly as follows:

(1) Adoption in accordance with native custom is declared to be no longer valid, except where such an adoption was made and registered before the 1909 Act, and was subsisting at the commencement of such Act.

(2) The Native Land Court is given exclusive jurisdiction to issue orders for adoption of children by natives. It is declared unlawful for magistrates to issue such orders under the Infants Act, 1908.

(3) Orders of adoption may be made in favour of both or either of two applicants being husband and wife.

(4) Only a native or a descendant of a native can be adopted by a native.

(5) "No order of adoption shall be made unless the Court is satisfied—

(*a*) That the child to be adopted is under the age of fifteen years.

(*b*) That the adopting parent (if unmarried) is at least thirty years older than the child.

(*c*) That the child, if, in the opinion of the Court, above the age of twelve years, consents to the adoption.

(*d*) That the adopting parent is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and that the adoption will not be contrary to the welfare and interests of the child.

(6) No order of adoption shall be made without the consent of the parents, or of the surviving parent (if any) of the child, whether that child is legitimate or illegitimate:

Provided that no such consent shall be required in the case of any parent as to whom the Court is satisfied—

(*a*) That he has deserted the child; or

(*b*) That he is for any reason unfit to have the custody and care of the child."

(7) An order of adoption has the same force as an order of adoption made under the Infants Act, 1908.

(8) An order of adoption may be annulled by the Native Land Court if the Court think fit.

(9) The jurisdiction to make an order of adoption is discretionary, but an appeal from any order made shall lie to the Native Appellate Court as in ordinary cases.

Brief Notes on the Existing Law.—The writer frequently takes cases in which a child has been fully adopted in accordance with ancient Maori custom, but has not been legally adopted. The adopted child in such cases now has no right to succeed to the lands of its adoptive parents, but so strong is the hold of the ancient custom upon this chivalrous people that the next-of-kin frequently waive their claims and allow the adopted child to succeed, even though the estates may be worth hundreds or thousands of pounds.

A case in which the Native Appellate Court (Chief Judge Jones and Judge Acheson) dealt with the existing law of adoption was: "*In re* Harawira Heperi, deceased (year 1920), and, upon reference back to the Native Land Court, the Court (Acheson J.) held that the adoption of one Hera Wharawhara had been made and registered before the 1909 Act, and was subsisting at commencement of that Act and had not been revoked for any reason. The Court held that three other children had also been adopted, but that their adoption was not subsisting as required by the Act, and consequently awarded the whole estate to Hera Wharawhara.

One peculiar feature of adoption among the Maoris is to be observed. Under the existing law, an adopted child may have four parents, two the natural parents and the other two parents by adoption. Upon the death intestate of any or all of the four

parents, the adoptive child is entitled to succeed to the whole, or portion (if other children) of the deceased's estate. The writer knows of a number of cases in which an adopted child (or " Tamaiti Whangai ") has become exceedingly wealthy in this way.

The numerous cases in which Maoris still apply for orders of adoption, and the far more numerous cases in which children are still adopted in accordance only with Maori custom, testify to the love of the Maori race for children (" tamariki "), even though the need for strengthening the tribe or sub-tribe has in recent years passed away. The Maori makes it a point of honour to see that no orphan or destitute child is left without a good home, and in this respect, as in many others, might well be held to teach a needed lesson to the " Pakeha," or European.

MANDATES.

[*Contributed by* PROFESSOR BERRIEDALE KEITH, D.C.L.]

Allocation of Mandates.—The simplest of the many problems arising from the adoption of the mandatory system is that of their allocation and the legal title of the mandatories. The Treaty of Peace with Germany provides in a perfectly explicit manner answers to both these questions, so far as concerns the territories, formerly in the hands of Germany, to which the system has been made applicable. By Article 119 of the Treaty Germany renounced in favour of the principal allied and associated Powers all her rights over her oversea possessions, and thus left it in their hands to determine the disposal of these territories, subject always to the understanding as to the future of these territories embodied in Article 22 of the Covenant of the League of Nations, which is an essential part of the Treaty of Peace. By that Article, again, it was contemplated that the tutelage of the peoples formerly governed by Germany should be entrusted to advanced nations, to be exercised by them as mandatories on behalf of the League of Nations. The power of allocation was thus given absolutely to the principal allied and associated Powers, while the mandate once allocated was to be exercised by the mandatory for the League.

In harmony with the system thus indicated the principal allied Powers agreed on the allocation of certain mandates, and the Council of the League of Nations on December 17, 1920, confirmed and defined, in terms previously agreed upon by these Powers, mandates for German South-West Africa to the Union of South Africa, for German Samoa to New Zealand, for Nauru to His Britannic Majesty, for the other German possessions in the Pacific south of the Equator to the Commonwealth of Australia, and for the German possessions north of the Equator to Japan. Formally, as regards all the Powers, members of the League of Nations, the action of the Council, not having been challenged by the Assembly,[1]

[1] On the ambiguity of the respective powers of the Council and Assembly see Assembly document 246, pp. 2, 6, 8.

must be regarded as definitely disposing of all questions of title, but the matter, it is clear, stands otherwise as regards those Powers which are not members of the League or bound to accept the decisions of the League, and in special as regards the United States of America. It is thus legitimate for the United States to adopt, as has been done, the attitude that the question remains entirely open as far as her interests are concerned, and that she need not recognise the mandates in these cases, unless and until she is satisfied that their terms are not inconsistent with her rights.[1] The entire novelty of the scheme of mandates renders it impossible to frame any complete reply to the United States' contention, and it has been felt necessary to postpone for the time being, pending exchanges of views between the principal allied Powers and the United States, the definite allocation of the mandates regarding the remaining German possessions in Africa, Togoland, the Cameroons and East Africa. *De facto*, agreements between France and the United Kingdom have determined the portions of Togoland and the Cameroons to be held by either Power,[2] while East Africa has been divided between the United Kingdom and Belgium,[3] but in none of these cases is there yet the formal authority of mandates confirmed by the League of Nations, although perforce administration has for years been carried on by the Powers interested.

In the case of the Turkish territories which fell to be surrendered by Turkey under the terms of the Treaty of Sèvres, the position remains yet more anomalous. Pending the ratification of that Treaty it was agreed at San Remo between the British and the other allied Governments that mandates should be allocated to the United Kingdom for Mesopotamia and Palestine and a mandate to France for Syria and the Lebanon, and a Franco-British convention of December 23, 1920,[4] provides for the boundaries of the French and British mandates and for certain economic relations concerning them. The failure of Turkey to ratify the Treaty of Sèvres has relegated to the future the possibility of the formal grant of the mandates, and France has concluded with the *de facto* Government of Angora an agreement which contemplates the tenure by France of her Syrian mandate on terms not yet sanctioned by the League of Nations. Despite the lack of formal title, however, the United Kingdom in her mandated territories has already exercised large powers of government, and in particular has created

[1] Compare *Parl. Pap.* Cmd. 1226.
[2] *Parl. Pap.* Cmd. 1350, pp. 2–10.
[3] *Ibid.*, Cmd. 1284 and 1428.
[4] *Ibid.*, Cmd. 1195, articles 1 and 2.

a Kingdom of Iraq out of the Mesopotamian territory, a step taken, on the ground of urgency, without consulting the League of Nations, although that body had been asked to assent to the proposal that an organic law should be framed for the territory and should be submitted for the approval of the Council of the League.[1] Strictly speaking, the rights of both the United Kingdom and of France in regard to Turkish territory rest on the fact of conquest and occupation alone. Moreover, in any settlement it is essential that due regard be had to the contentions of the United States, which maintains that nothing in any mandate must impose any disadvantage in matters of commerce or trade upon citizens of the United States.

Determination of the Terms of the Mandates.—Neither the League Covenant nor the other portions of the Treaty of Peace with Germany provide explicitly as to the mode in which the terms of each mandate are to be laid down. Article 22 of the Covenant provides that "the degree of authority, control or administration to be exercised by the mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council." The provision, unhappily, is hopelessly obscure, for there is nothing to explain the signification of the term "members of the League." The only interpretation of the term on a strictly legal basis is that of Lord Robert Cecil[2] which refers it to the Assembly; but it must be admitted that this cannot have been the intention of the provision, since there is a manifest absurdity in thus disposing of the issue. The principal allied and associated Powers doubtless meant the term to refer to themselves alone among the signatories of the Treaty of Versailles and the members of the League of Nations, and in practice they have thus interpreted the position, subject to the decision of the United States to accept no share in the matter. It is, however, clear that the Council has the right to intervene in the event of undue delay on the part of the allied Powers, and the matter might have been made the subject of the intervention of the Council in 1921, had not the whole issue been complicated by the objection of the United States to any steps to grant mandates until its views had been fully met.

Even, however, if the allied Powers have agreed on the terms of the mandates, it is clear that it lies with the Council to consider whether the terms thus agreed upon are in harmony with the pro-

[1] *Parl. Pap.* Cmd. 1500, p. 3, Art. 1.

[2] *The Times*, July 1, 1920. Compare M. Hyman's report to the League of Nations, Assembly Document 161, p. 16; Keith, *War Government in the Dominions*, pp. 194, 195.

visions of Article 22 of the Covenant. It does not seem that the Council has the right to decline to confirm a mandate because it would have preferred some other terms, unless it is satisfied that the terms proposed actually run counter to the provisions of the article, and in the mandates so far formally confirmed the congruence of the terms and the Article has been close and patent.

The Three Classes of Mandates. — The simplest form, and the only one so far to have obtained formal confirmation by the League, is the " C " type, applicable to South-West Africa and the islands of the Pacific.[1] These territories, owing to sparseness of population, or small size, or remoteness from centres of civilisation, or geographical contiguity to the territory of the mandatory, are deemed suitable for administration under the laws of the mandatory as integral portions of its territory, subject to certain safeguards in the interests of the native population. The provision of the Covenant is strange and ambiguous; its origin affords an explanation, in so far as it represents a compromise between the demands of the interested parties for complete annexation and the mandate principle upheld by the President of the United States. In point of fact, it has been interpreted in the Commonwealth of Australia, New Zealand and the Union of South Africa as implying a virtual annexation, a view presumably held also by His Majesty's Government, and by Japan in respect of her mandated territory. The issue is of the highest importance precisely in respect of German South-West Africa. The Prime Minister of the Union has repeatedly emphasised the view that the German settlers there must dismiss the idea that the mandate implies a separate existence for the territory, and must accept the doctrine that its fate is indissoluble connection with the rest of the Union territory.[2] Yet this theory finds no countenance in the terms of Article 22, which deals with the system of mandates as applicable to " peoples not yet able to stand by themselves under the strenuous conditions of the modern world." In mandates of the class " A " type, such as those for Mesopotamia and Palestine, it is frankly recognised that the mandate cannot be for ever, and on principle there seems no ground for asserting that the other mandates are in their nature irrevocable.

A further serious difficulty presents itself as regards the conditions, subject to which the exercise of the rights of the mandatories are to be exercised. What are the safeguards in the interests of

[1] *Parl. Pap.* Cmd. 1201–1204.
[2] Keith, *War Government in the Dominions*, p. 191.

the indigenous population referred to in Article 22? The mandates issued answer the question by defining them so as to cover (1) the guarantee of the freedom of conscience or religion, subject only to the maintenance of public order and morals; (2) the prohibition of abuses such as the slave trade, the liquor traffic, and the arms traffic; and (3) the prevention of the establishment of fortifications or military and naval bases, and the military training of the natives for other than police purposes and the defence of territory. No provision is made to secure equal opportunities for the trade and commerce of other members of the League. The omission of such provisions is, of course, deliberate[1]; but it is by no means clear, despite the confirmation of the mandates by the Council of the League, that the terms of Article 22 have been effectively complied with. It is not in the least obvious that it is a safeguard in the interest of the natives to prevent their military training, while it is not a safeguard to permit them to realise the higher prices for their produce which would be forthcoming if a monopoly of trade were not conferred on the mandatory if he chooses to exercise it. Similarly, the assumption by the mandatories of the right to restrict immigration into the territories entrusted to them is an act dictated obviously by their own interest in the first instance, and probably hard, if not impossible, to justify if regarded solely from the point of view of the peoples entrusted to them. In fact, if the mandate is to be judged on the analogy of the English or the Scottish doctrine of trusts, there is a decided discrepancy between the duties of a mandatory and those of a trustee, who is bound not to be an *auctor in rem suam*, while it may be feared that a mandatory's chief *raison d'être* is enlightened self-interest.

The tenability of this aspect of the mandatory system has been severely tested by the objections of the United States, exhibited in the most acute form in the case of the claims of Japan as to Yap, and the validity of the system internationally seems most dubious.[2] To the British Dominions, however, the matter is one of deep interest; if freedom of migration to the subjects of other

[1] Keith, *War Government in the Dominions*, pp. 193, 194.

[2] A reservation to the Pacific treaty of December 13, 1921, between the British Empire, the United States, France, and Japan, provides that the making of the treaty shall not be deemed assent on the part of the United States to the mandates, and shall not preclude agreements between the United States and the mandatory Powers respectively in relation to the mandated islands, and in a separate treaty Japan has made the necessary concessions to the United States to secure recognition of her right to administer her Pacific mandate. Similar concessions by the British Empire are contemplated.

members of the League of Nations were permitted, Australia would be faced by the possibility of the influx of a large contingent of Japanese into her Pacific mandate, and Indians might find it possible to settle in South-West Africa. Considerations of this kind suggest that the mandatory system was ill adapted for application in these cases, and that, if it is maintained, it can only be on the understanding that in mandates of type "C" the system is a mere, somewhat unnecessary, cloak for annexation.

Mandates of "B" Type.—In Article 22 of the Covenant it is clearly contemplated that the German possessions in East and West Africa should have formed the subject of mandates of a type intermediate between that applicable to the Turkish territories and that applicable to South-West Africa and the islands of the Pacific. In point of fact, however, only one mandate of the true type has been evolved, and this still lacks confirmation, the mandate for British East Africa,[1] now administered as the Tanganyika Territory. The terms of this mandate are excellent and breathe the true spirit of the system, for, besides providing suitably similar safeguards to those included in the mandates of class "C," the mandatory undertakes to secure to all nationals of States, members of the League of Nations, equal rights with his own nationals as regards entry into and residence in the territory, protection of persons and property, acquisition of property, movable and immovable, and the exercise of professions or trades. Freedom of transit and navigation, and complete economic, commercial and industrial equality are conceded, subject only to the right of the mandatory to organise essential public works and services on such terms as he thinks just, a provision which obviously is aimed against any state trading which cannot be asserted to be essential. Concessions for the development of natural resources must be made without distinction of nationality, but on such conditions as shall maintain the authority of the local government.[2] The privileges granted to nationals of any State are applicable to companies formed under the laws of that State. These provisions, it is clear, are just and proper, and they reveal in its complete theory the mandatory system. Similar provisions are proposed for adoption in the case of the Togoland and Cameroons mandates, but in these cases it is also proposed that the mandatory shall administer the territories

[1] *Parl. Pap.* Cmd. 1284 and 1449.

[2] On these points compare Keith, *The Belgian Congo and the Berlin Act*, pp. 286–8; *Parl. Pap.* Cmd. 1226.

on the footing of integral parts of his own territory,[1] a distinction which may be of some importance. France, for her part, remains, as in 1919, unwilling to accept the same terms for her African acquisitions, mainly it would seem on two grounds. In the first place, she is not contented with the restriction on the arming of native forces for defence purposes only; and, secondly, she contends that it would be unjust to open these territories to free exploitation for commercial purposes by other nations, including eventually Germany, seeing that the cost of administration must be heavy and can be rendered tolerable only if France can apply her own conceptions of a colonial commercial regime. It must, however, be noted that in this attitude the French Government is clearly running counter to the only possible intention of Article 22 of the Covenant.

Mandates of "A" Type.—In the case of the Turkish territories conquered by the Allies, the mandatory system contemplated in the Covenant is one in which the existence of the communities concerned as independent nations can be provisionally recognised, subject to the rendering of administrative advice and assistance by a mandatory until such time as they shall be able to stand alone. The position is rendered more definite by Article 132 of the Treaty of Sèvres, August 10, 1920, under which Turkey renounces in favour of the principal allied Powers her rights over Mesopotamia and Palestine, and by Articles 94 and 95, which contemplate the recognition of Mesopotamia as an independent State, subject to the rendering of administrative advice and assistance by a mandatory, and the entrusting of the administration of Palestine to a mandatory under the obligation of securing the establishment in Palestine of a national home for the Jewish people. The practical disappearance of the Treaty of Sèvres precludes the possibility of the carrying out of the precise procedure contemplated by that Treaty, and in the course of events the mandate for Mesopotamia seems likely to come more nearly to assume the form contemplated in Article 22 than was originally the case.[2] The establishment of an Arab kingdom suggests that the duties of the mandatory as regards internal affairs may gradually be reduced to the modest rôle contemplated in Article 22. But the mandatory must for the present, at any rate, remain entrusted with the conduct of the foreign relations of Mesopotamia, and with the duty of preventing the cession or lease of any portion of the territory to a foreign Power, while the Kurdish area is not yet included in the Arab kingdom, and for

[1] *Parl. Pap.* Cmd. 1350, pp. 12, 15.

[2] See *Parl. Pap.* Cmd. 1500.

it the mandatory cannot evade a full measure of responsibility. In Palestine, on the other hand, the mandatory has and must retain sovereign power, and the conflicts of national needs and claims differentiate this from all other mandates.[1] Moreover, it is impossible not to recognise the gravity of the difficulty created for the mandatory by the fact that the adoption of the principle of a Jewish national home runs directly counter to the doctrine of the right of each people to self-determination. The result necessarily is that the mandatory must look forward to an indefinite period of active supervision, as the only possible method of securing the carrying out of the establishment of the Jewish home in the face of the strong and natural objections of the Arab population. In addition, the mandatory is empowered to apply a separate regime to the territory between the eastern boundary of Palestine and the Jordan, and this area is in fact under the control of an Arab chief, responsible only to the mandatory.

Both in the case of Mesopotamia and Palestine the mandates as drafted [2] contemplate the absolute extinction in the territories of the immunities and privileges of foreigners, including the benefits of consular jurisdiction and protection, and there is imposed on the mandatory the grave duty of securing that the judicial system established in Mesopotamia and Palestine shall safeguard the interests of foreigners. This provision inevitably must entail a serious responsibility; the Arab kingdom of Iraq, it is obvious, cannot of itself provide a judiciary competent to satisfy this condition; the mandatory will have actively to intervene to secure the requisite creation of a judicial system applicable to all cases which involve a foreign element, and the position in Palestine does not vitally differ.

The Control of the League.—Article 22 contains no direct definition of the extent of control over the mandatories which the League may exercise; but it provides that each mandatory must render an annual account of the territory entrusted to his charge, and that a permanent Commission shall be constituted to receive and examine the annual reports of the mandatories, and to advise the Council on all matters relating to the observance of the mandates. As constituted by a resolution of the Council of December 1, 1920,[3] the Commission is to consist of nine members, a majority being

[1] See *Parl. Pap.* Cmd. 1449.
[2] *Parl. Pap.* Cmd. 1500, pp. 3, 4, 8, 9.
[3] Assembly Document 161, pp. 34, 35.

nationals of non-mandatory Powers. The members are selected by the Council on grounds of personal merit and competence, and must not, while members, hold any office which puts them in a position of direct dependence on their Governments. An expert appointed by the International Labour Organisation may attend in an advisory capacity all meetings of the Commission at which questions relating to labour are discussed. Each mandatory is required to send the annual reports to the Commission through duly authorised representatives, prepared to offer any supplementary explanations or information which the Commission may desire. Each report must be examined in the presence of the duly authorised representative of the mandatory Power from which the report comes, and this representative is entitled to take a full part in the discussion. The terms of the report to be made to the Council by the Commission will be decided in his absence, but must be communicated to the representative, who will be entitled to comment upon it, and, when the reports of the mandatories are forwarded to the Council by the Commission, they must be accompanied not only by their own report, but also by the remarks of the representatives. These remarks must also, if desired by the mandatory, be published when the other documents are made public. The Commission, acting in concert with the representatives, of the mandatories, shall hold a plenary meeting to consider the reports as a whole and any general conclusions to be drawn from them, and, apart from consideration of the reports, it may convene such a meeting in order to lay before the representatives of the mandatories any matters which the Commission considers should be submitted by the Council to the mandatories and to the other members of the League.

It is obvious that the work of the Commission cannot be confined to the mere ascertainment whether the mandatories have kept strictly within the ambit of their authority, but must survey generally the work done in each territory to see whether the mandate is being fulfilled in spirit as well as in the letter.[1] Apart from any technical argument, this duty follows clearly from the fact that mandatories administer on behalf of the League, which therefore is morally responsible for any violation of the principle of mandates, and which, accordingly, is bound to study the conditions in which they are being carried out. The Commission, of course, has no authority over the mandatories, and the Council and the

[1] Assembly Document 161, p. 17.

Assembly alike have no means of enforcing their views on the mandatories other than through the general procedure of the League of Nations, which normally implies unanimity of opinion. The true mode of securing the just carrying out of the system lies in bringing to bear on any abuses the public opinion of the League, and especially of the country whose methods are pronounced faulty. Though public opinion works slowly and sometimes is ineffective, in the long run the advantage of the issue of reports by the Commission will be found to be substantial. Moreover, the effect will not be confined to the actual territory administered under mandates; practices there disapproved can hardly survive indefinitely in adjacent areas under direct sovereignty; it is sufficient to remark that the existence of the mandate for East Africa with its principle of equal opportunity for all comers operated as one of the reasons which condemned to failure Lord Milner's effort to apply to Kenya and Uganda the principle of the segregation of the Indian community.[1] As far as the United Kingdom is concerned, it may be taken as certain that any censure by the Commission would, if really well founded, be taken up effectively by British public opinion.

Modification or Termination of Mandates.—A more definite and very important function is assigned to the Council of the League by the terms of the mandates themselves as issued or drafted. In the case of the mandates of "C" type, the consent of the Council is required for the modification of the terms of the mandates. In the other mandates the same condition is imposed, with the relaxation that, if the proposed change is brought forward by the mandatory, the consent of the Council may be accorded by a majority. A case which may be held to involve this principle has already arisen, in so far as the question has been raised how far it is proper that the inhabitants of the mandated territories should be permitted or required to accept the nationality of the mandatory. The issue is naturally especially acute in the case of South-West Africa; apart from questions of expediency, is it open to the Union of South Africa to insist on declaring the German and other Europeans who desire to remain in the territory to be British subjects? Can the Commonwealth extend to the Pacific Islanders formerly under German control the same status as British subjects which is possessed by the Papuans? The issue can hardly be separated from the problem of the meaning in the case of the mandates of

[1] *Parl. Pap.* Cmd. 1311, 1312.

"C" type of the provision that the territories concerned are to be administered as integral parts of the possessions of the mandatory Powers, or the question whether such mandates can ever be brought to an end. If such termination is possible, there would clearly be a certain incongruity in granting the right to compel the acceptance of the nationality of the mandatory. There seems, however, no ground of principle on which exception would be taken to the exercise by the mandatory of the right of granting his nationality to such inhabitants of the mandated territory as may desire to receive it, and this arrangement would seem to meet all possible needs, and to be applicable to mandates of any type.

In the case of Mesopotamia and Palestine the draft mandates [1] contemplate the event of the termination of the mandate in either case, and impose on the Council of the League of Nations the duty of making such arrangements as may be deemed necessary for securing under the guarantee of the League that the new Government will fully honour the financial obligations legally incurred by the mandatory during the period of the mandate, including the rights of public servants to pensions and gratuities, and in the case of Palestine the obligations [2] imposed on the mandatory regarding the sacred places of Palestine. The provision is important, as it definitely negatives the possibility of the mandatory Power, on resigning the mandate, finding its commitments to public servants and concessionaries repudiated by the new administrations.

The International Court of Justice.—Finally, a provision of the highest value in the mandates provides an effective means of dealing with any disputes which may arise between the mandatory and other Powers, members of the League, as to the interpretation or application of the provisions of the mandates. In any such case, if the matter proves incapable of settlement by negotiation, it must be referred to the Permanent Court of International Justice contemplated by Article 14 of the Covenant of the League of Nations, and now duly constituted by the agreement of the powers.[3] The power to insist on such a reference does not, it should be noted, extend to the question whether the mandate itself conforms to Article 22 of the Covenant; as the responsibility for approving the mandates rests with the Council, it is doubtless assumed that the possibility of such a discrepancy ought to be ruled out of account. No provision is made for arbitration between the League and the

[1] *Parl. Pap.* Cmd. 1500, pp. 6, 13. [2] *Ibid.*, pp. 9, 10, articles 13 and 14.
[3] *Ibid.*, Cmd. 1276.

mandatory; such an arrangement would clearly be inconsistent with the relation which is held to exist between the League and the mandatories. There is further no procedure [1] by which inhabitants of the mandated territories, who represent that the terms of the mandate are being violated, can bring their plea before either the League or the Court; but in certain cases, of course, the same end could be attained indirectly if some power, member of the League of Nations, could be induced to take up the issue. It may, indeed, be argued that a complaint can only be made by a member of the League in respect of some injury inflicted on its own subjects or interests in respect of the territory; but this would clearly limit indefinitely the scope of the general provision for arbitration, which can be fairly interpreted only if it is assumed to give any member of the League the right to obtain from the Court of International Justice a binding declaration on the true meaning of the mandate and on the just method of its application. It must be recognised that in this provision there lies the possibility of considerable embarrassment for the mandatory; Germany, for instance, if admitted a member of the League, might insist on referring to the Court her views as to the effect of the Union mandate for South-West Africa, and Japan could similarly ask for a ruling on the effect of the Australian mandate for German New Guinea. But such liability is an essential feature of the system which aims at substituting some measure of international control for national dominion. Yet the existence of such possibilities goes far to explain the lack of enthusiasm for the mandatory system which is discernible in the British Dominions, in France, and in Japan.

Finance.—This feeling of dissatisfaction is reinforced by the fact that the mandatory system differs in one essential from any general doctrine of agency or trusteeship. It is not contemplated in the Covenant of the League or, directly at any rate, in any of the mandates that the mandatory should be entitled to be recouped for expenditure incurred on the mandated territory, a position which stands in sharp contradiction with the doctrine of the Judicial Committee finding the British South Africa Company entitled to the repayment of its administrative expenditure on Rhodesia, although such repayment had not been provided for in any agreement with the Company or in its Charter.[2] Possibly in the case of the man-

[1] Suggested by the British League of Nations Union, Assembly Document 246, p. 17.

[2] [1919] A.C. 211.

dates for Mesopotamia and Palestine the terms used [1] would cover a claim by the mandatory that the Council of the League on the termination of the mandate should insist on the Mesopotamian or Palestinian Government assuming responsibility for the sums expended by the mandatory during the period of the mandate; but in any case it is clear that such an arrangement would be impracticable. In probably the majority of cases the mandates will involve some expenditure by the mandatory, which cannot either at once or later be refunded from the resources of the territory. This consideration must be of weight in the deliberations of the Commission when it feels inclined to suggest reforms, for obviously it would be unreasonable to place heavy pecuniary obligations on a mandatory except in the case of absolute necessity.

[1] Arts. 20 and 28 respectively.

THE STUDY OF COMPARATIVE LAW IN FRANCE AND ENGLAND.

[*Contributed by* PROFESSOR H. C. GUTTERIDGE.]

THE inaugural lecture of M. Edouard Lambert, Professor of Comparative Law in the University of Lyons, delivered at the commencement of the present Session,[1] comes as an opportune reminder to English lawyers of the marked progress which is being made in the teaching of Comparative Law in France. Chairs in this subject have been established both in the University of Paris and in the principal provincial Universities, and its study now occupies a well-recognised place in the curricula of the various Faculties of Laws in France. The University of Paris possesses, in fact, two Chairs of Comparative Law; one of these relating to Comparative Civil Law in the strict sense of the word, and the other to Maritime Law and Comparative Commercial Legislation. The method of instruction is, in general, based on a division of the laws of the civilised world into three categories: (*a*) The Latin Group; (*b*) the Germanic Group; and (*c*) the Anglo-American Group; and takes the form of a comparison of the juristic principles underlying each group. It would seem that in practice special attention is being paid to English and American Law. Professor Levy-Ullmann, of the University of Paris, is, for instance, responsible for a valuable and illuminating course of lectures on the fundamental principles of English law in which the distinctions between the essential characteristics of the English and French law are brought out with great lucidity, and traced back to their origins in legal history. Professor Lambert, of the University of Lyons, Professor Lerebours-Pigionnière, of the University of Rennes, and Professor Escarra, of the University of Grenoble, are working on similar lines. The investigations which are being made are by no means merely academic in character. The English law relating to Joint Stock Companies is a case in point,

[1] L'Institut de Droit Comparé, son programme et ses méthodes d'enseignement. A. Rey (Lyons, 1921).

and is attracting a very considerable amount of attention from French practising lawyers at the present time. The study of comparative commercial law is not being very actively pursued at the moment, though the importance of this particular branch of the subject has not been overlooked, and developments in this direction may be expected. Professor Percerou, of the University of Paris, is the foremost exponent of this branch of the subject, both as a teacher of comparative commercial law at the "École libre des sciences politiques" and as editor of the *Annales de Droit Commercial.*

Professor Lambert is the originator of a bold and interesting experiment; and his inaugural lecture is devoted to an explanation of the new scheme for the study of Comparative Law which owes its inception to him. A separate study section entitled "The Institute of Comparative Law" (L'Institut de Droit Comparé) has been established under the ægis of the Faculty of Laws of the University of Lyons in co-operation with the Faculty of Economics. The scheme is based on a threefold course of seminar instruction combined with teaching according to the case book method. The student is given the facts of some English or American leading case which raises a question of interest to lawyers of all nationalities, and his first duty is to submit these facts to a critical examination from the social and economic point of view under the guidance of a teacher of economics. The next stage is to study the Anglo-American law bearing on the case, more particularly as laid down in the judgments of the English or American Court. Finally the French law applicable to the case is examined, and the student then makes a reasoned statement expressing his views on the points at issue.

This method of teaching is a striking innovation so far as the French Universities are concerned, and without expressing any opinion as to the suitability of the case book system for the purpose, it is safe to say that the future developments of this experiment will be watched with great interest by teachers in other schools of law. It must not, however, be thought that the activities of the Institute are to be confined to this scheme. Candidates for higher degrees in law are to be encouraged to deal with subjects relating to comparative law in presenting their theses for those degrees. English lawyers will be interested to learn that research students of the University of Lyons are at the moment engaged in compiling a monograph on the life and work of Maitland. It is further pointed out by Professor Lambert that the proximity of Lyons to the Italian

Universities should facilitate the comparative study of the two principal systems of jurisprudence in the Latin Group.[1]

In spite of the fact that the teaching of Law in England is not—as is sometimes alleged—purely professional in character, it must be confessed that the study of Comparative Law has been sorely neglected in this country. It is left untouched by the older Universities and the provincial Universities. The University of London stands alone in recognising it as a subject which can be offered by a candidate for its law degrees, and in the possession of a Chair of Comparative Law. In addition to this the terms of appointment to the Cassel Chair of Commercial and Industrial Law impose on its occupant the duty of promoting the study of Comparative Commercial Law, which occupies a very modest position amongst the subjects to be taken by candidates for the Bachelor of Commerce degree (Trade Group). Spanish law and the Code Napoléon have also formed the subject-matter of instruction courses in the University from time to time. But it cannot be said that at the moment the subject occupies a similar position to that which is given to it in the University of Paris, though this is largely due to causes which affect the Faculty of Laws as a whole and need not be discussed here.

Comparative Law is not, of course, a part of the necessary equipment of the practising lawyer, but there can be no doubt as to its value from the point of view of international comity and the promotion of intercourse between nations. The barrier created by a difference of law is no less real and formidable than that arising from a difference of language. The unity of law throughout the civilised world may be a mere dream, but the importance of a knowledge of the laws of other countries is a practical question of considerable importance. Curiously enough, lawyers appear to be blind to this aspect of the matter, and the impulse towards a better understanding of foreign law has hitherto come from the commercial community. We are told by Professor Lambert that this is also the case in France, and it would seem that it is to this quarter that one must look for assistance in further developments. Men of business are keenly alive to the difficulties resulting from the application of conflicting rules of law to the transactions of everyday life. It is they, and not the lawyers, who have been the prime movers in such efforts as have already been made to do away with unnecessary discrepancies

[1] In Italy Professor Sarfatti, single-handed and undaunted by opposition, has succeeded, in the face of apathy and discouragement, in obtaining the recognition of the study of Comparative Law at the University of Turin.

between the laws regulating commerce in different countries. It is sufficient to refer to the events which have given us the York-Antwerp Rules and the Hague Rules, 1921, as illustrating the weighty influence which men of business have been able to bring to bear on occasion. It must be admitted that commercial law provides a singularly favourable field for experiments of this nature. Business transactions are governed in the long-run by considerations of common sense and expediency, whilst in dealing with such matters as marriage and divorce and family relationships the claims of sentiment cannot be ignored, and allowance must also be made for differences in race, religion, and climate, and for those deep-rooted habits and customs which are inexplicable save on historical grounds.

But although movements towards unification may owe their inception to a lay source, they cannot be carried through without the assistance of the trained lawyer. The conflicting rules of law must be definitely ascertained, and it must be considered whether the conflict is due to differences in fundamental conceptions of rights and duties, or whether the varying rules are merely excrescences on the general body of the law which can be abolished without doing violence to firmly-established legal principles. It is this which is the function of the comparative lawyer, and too much stress cannot be laid on the fact that he cannot, and should not endeavour to, pursue his researches in splendid isolation. His work can only come to complete fruition, so far as he is in touch with other investigators in foreign countries who are engaged in research on the same lines. Otherwise he can never be sure of the accuracy of his conclusions. Technical legal terms which seem on the face of them to be identical are often used in varying senses in different countries, and, moreover, an investigator may sometimes also be led astray by an apparent similarity of legal doctrine which does not, in fact, exist. Further, there is the real difficulty in keeping abreast of changes in the law of a foreign country under existing conditions. The complaint is the same everywhere, namely, a scarcity of up-to-date foreign law books. This is certainly the case in this country. A search through the principal libraries of London will reveal the nakedness of the land. Such material as is available is scattered, and it is almost impossible to discover where any particular book is to be found. The books which do exist are insufficient, and if information is sought as to even an elementary point of foreign law, it may be necessary to obtain it from abroad with consequent delay and expense.

So far as London is concerned, a considerable step in advance would be made if a central catalogue could be compiled, and it is suggested that this is an enterprise which would very properly fall to the lot of the Society of Comparative Legislation. But the scarcity of material cannot be overcome without very considerable expenditure, such as no one institution could well undertake. The scheme which would seem to offer the best prospects of success would be some arrangement by which each institution would undertake the collection of foreign books dealing either with the law of some one country or group of countries or with some one branch of the law. This would spread the burden and would also do away with any unnecessary duplication such as is taking place at present. Much could also be achieved by a properly organised system of exchanging books with similar bodies in foreign countries, and as has already been pointed out, it is necessary that foreign jurists should co-operate in order to secure that each collection should be thoroughly up to date.

The secret of success must, in other words, be sought for in increased collaboration both at home and between English and foreign jurists. There would, in fact, seem to be great scope for some central body on the lines of the "Comité Internationale Maritime" which should have as its object the bringing together of comparative lawyers of all nations, and thus facilitate the interchange of ideas and the dissemination of accurate knowledge. This is a matter which might well be taken up by the existing societies of comparative law, and whether the result should prove to be a series of annual conferences or some other more ambitious scheme, there can be but little doubt that the consequences would be far-reaching both as regards the study of this important subject and the promotion of good feeling between lawyers of many nationalities.

THE COURT OF INTERNATIONAL JUSTICE.[1]

[*Contributed by* WILLIAM LATEY, ESQ.]

THE Permanent Court of International Justice elected at the September 1921 Assembly of the League of Nations met privately for the first time at the Peace Palace at The Hague on January 30. M. Loder was appointed President, and M. Weiss Vice-President. The public inauguration was arranged for February 15, though the actual sittings open on June 15.

This Court has been set up in pursuance of Article 14 of the Covenant of the League of Nations, which says:

> The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

In the summer of 1920 a Committee of jurists was formed which produced the Draft Project which was, with one serious alteration, adopted by the League Assembly of that year. The Committee comprised M. Adatci (Japan), Señor Altamara (Spain), Baron Descamps (Belgium), Senhor Fernandes (Brazil), the late M. Hagerup (Norway), M. de Lapradelle (France), Judge Loder (Netherlands), Lord Phillimore (Great Britain), Signor Ricci-Busatti (Italy), and Mr. Elihu Root (United States), and unofficially, but by no means least, Mr. James Brown Scott, of the Carnegie Endowment for International Peace. Of these, as will be seen from the following list of judges, only Señor Altamara and Judge Loder are on the International Court:

Judges.—Señor Rafael Altamara (Spain): Senator, Professor of the History of American Political and Civil Institutions at Madrid University.

Signor Dionisio Anzilotti (Italy): Assistant Secretary-General of the

[1] In connection with this article may be read an interesting contribution in the *Harvard Law Review*, vol. xxxv, No. 3, by Professor Manley Hudson.

League of Nations; member of the Institute of International Law; Professor of International Law at Rome University.

Senator Ruy Barbosa (Brazil): Ex-Minister of Finance: represented Brazil at the second Hague Conference.

Señor Antonio de Bustamente (Cuba): Professor of International Law at Havana University; Delegate at Paris Peace Conference, 1918–19.

Viscount Finlay (Great Britain): Attorney-General, 1900–5; Lord Chancellor, 1915–18.

M. Max Huber (Switzerland): Delegate at 1907 Hague Conference; Law Professor at Zurich University.

M. B. C. J. Loder (Holland): Judge of the Netherlands Supreme Court since 1909; Member of the Institute; with Lord Phillimore and Mr. Root the chief author of the Draft Project.

Mr. J. Bassett Moore (United States): Professor of International Law at Colombia University; several times Under-Secretary of State: member of the Institute.

M. Dedrik G. G. Nyholm (Denmark): Since 1896 member of Mixed Tribunal at Cairo.

Dr. Yorosu Oda (Japan): Professor of International Law at Kioto University.

M. Charles A. Weiss (France): Professor of International Law at Paris University; member of the Institut de France.

Deputy Judges.—M. Frederik V. N. Beichmann (Norway): President of Court of Appeal; Member of the Institute.

M. Michel Jovanovitch (Jugo-Slavia): President of Belgrade Supreme Court.

M. Demetre Negulesco (Roumania): Professor at Bucharest University since 1901.

Mr. Wang Chung Hui (China): Ex-Minister of Justice; Barrister of the Middle Temple.

Composition of Court.—It was provided by Articles 2 and 9 of the Statute of the Court that the judges should be chosen from "persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law." "The whole body should also represent the main forms of civilisation and the principal legal systems of the world." In fact only five of the fifteen members of the Court have had judicial experience according to English ideas.

Another feature of the Court is the apparent predominance, counting by heads, of the Spanish and Latin-American legal system. This is represented by three members, whereas the Anglo-Saxon

system is represented only by Lord Finlay and Professor Moore. The Draft Hague Convention of 1907 for a compulsory International Court failed owing to the difficulty of reconciling the claims of the Great Powers as trustees of immense interests for a predominant position on the Court with the claim of the small States for equality. The former spirit was opposed to the Anglo-American conception of a Court of Justice as a body of judges administering the law utterly uninfluenced by political interests, and the machinery of election contained in the Phillimore-Root Project and carried into effect last year rendered possible the realisation of this conception. The League Council, with its permanent predominance of Great Powers, had to elect judges simultaneously with the League Assembly, the latter balloting on the basis of one State one vote. It was expected that, although theoretically the nationality of any one judge should not count, this arrangement would result in the Great Powers each having a national on the Court. So it has turned out, Russia and Germany being excluded until they have once again justified their admission to the comity of nations. Nevertheless, the pertinacity with which the Latin-American States, a very solid voting *bloc* in the Assembly, pressed forward a Chilian candidate against Baron Descamps, the famous Belgian jurist, whose claims for election were undoubted, manifested a racial bias. Fortunately there is no possibility of this disposition being carried into the deliberations of the Court itself; judges of The Hague Court are debarred from holding any administrative or political post at the same time.

Judges are elected for nine years, and the President is chosen for three years by his colleagues and must live during his term at The Hague, the official seat of the Court. The salaries and allowances, all free of tax, are as follows:

President: 60,000 florins a year (about £5,000); Vice-President, 15,000 florins a year salary and a maximum duty allowance of 30,000 florins (maximum of about £3,750); Ordinary Judges, salary 15,000 florins, plus duty allowance 20,000 florins maximum; Deputy Judges, duty allowance of 30,000 florins maximum. Duty allowances are payable from the date of departure until the date of arrival back. For each day of actual presence at The Hague all but the President will receive a further allowance of 50 florins. These and other costs of the Court are borne by the League of Nations.

Competence and Jurisdiction.—The important alteration made in the Draft Project by the League of Nations Assembly was the

substitution of " permissive " for " compulsory " jurisdiction. The real reason for this change was the feeling of the British and French Governments that the animosities arising out of the Great War must be allowed to die down before any Power could be haled *nolens-volens* before The Hague Court, and that there were vital issues to be settled of this sort with which the Court must not be overburdened at the outset. But as the very object of setting up the Court was to improve upon the permissive system of arbitration created by The Hague Conferences, there can be little doubt that if the Court makes a good impression at the beginning, its writ will run and its judgments be respected throughout the world.

Article 36 begins : " The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force." Then comes an optional clause whereby any State, either when signing or ratifying the Statute *or at a later moment*, may declare that it recognises—

" As compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning : (*a*) The interpretation of a treaty ; (*b*) any question of International Law ; (*c*) the existence of any fact which if established would constitute a breach of an international obligation ; (*d*) the nature or extent of the reparation to be made for the breach of an international obligation. The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States or for a certain time. In the event of a dispute as to whether the Court has jurisdiction the matter shall be settled by the decision of the Court.

Up to date eighteen States have accepted the optional clause subject to reciprocity, viz., Holland, Denmark, Switzerland, Portugal, Bulgaria, Norway, Brazil, China, and several minor European and South American States. None of the Great Powers have accepted at the outset the general jurisdiction of the Court, but in fact they have agreed in advance to submitting many important matters to it in case of disputes, as will be seen by reading the first paragraph of Article 36 (reproduced above) in conjunction with Article 37, which reads : " When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal."

Articles 26 and 27 provide for special chambers of five of the judges to deal with Labour and Transit cases, arising out of the

Treaty of Versailles and the corresponding treaties. Part XII of the treaty, dealing with Ports, Waterways and Railways (Articles 336–337), authorises resort to the Court when it is alleged that any riparian State has failed to comply with its obligations with regard to international navigation, and (Articles 380–386) the same right is given with regard to the now free Kiel Canal.

Part XIII of the Treaty, dealing with Labour, by Articles 415–423 confers upon the Court an extremely arduous appellate jurisdiction which is likely to involve the Court in difficulties at the outset owing to the way in which the International Labour Office is pushing the pace. One of the first matters already to come before the Court as a case for opinion is the French Government's claim that the Labour Office cannot interfere in questions of agricultural labour.

For labour and transit questions technical assessors to assist the Court may be nominated from each League Member State, and this panel when complete will contain over three hundred names.

The Treaty of St. Germain confers certain rights on national minorities, and Article 69 provides that any dispute relating thereto shall, on the demand of the other party, be brought before the Court. Similar provisions figure in the treaties with Roumania (Article 30), Bulgaria (Article 57), Poland (Article 12), Greece (Article 14), Jugo-Slavia (Article 11), and Czecho-Slovakia (Article 14). The Court will also have jurisdiction in international disputes arising out of the Arms Traffic Convention and the Liquor Traffic Convention of September 1919.

The Convention for the regulation of Aerial Navigation of October 1919 makes the Permanent Court an appellate tribunal in respect of disputes which the International Commissioners to be appointed under that instrument may be unable to settle among themselves, and the development of aerial flight will inevitably bring in its train many a weighty legal problem. Certain of the Mandate Conventions framed under the Covenant of the League provide that disputes between League Members relating to the interpretation or application of matters which cannot be settled by negotiation shall be submitted to The Hague Court. There are many other international agreements such as the White Slave, Postal Union, and Opium Conventions which lend themselves to the jurisdiction of the Court.

No Private Parties.—Private causes do not come within the cognisance of the Court unless they are taken up by Governments, and the Court, which is to be master of its own competence to

a great extent and of its procedure, no doubt will have to discriminate between cases analogous to a *private* prosecution at the Old Bailey, which, *semble*, will be beyond its scope, and those analogous to a Crown prosecution at the Old Bailey, wherein the whole weight and responsibility of the State are involved and the private individual is not the chief mover. On this point Lord Phillimore has written: "In reality most disputes between States arise out of complaints that wrong has been done by one State to individuals or classes in another. I presume that if a State claims to take up the cause of people who are not citizens of its own, it will be open to the quasi-defendant to say, 'How does this concern you?' and for the complaining State in return to make out and support its legitimate interest in the dispute." [1]

Law and Procedure.—One stupendous benefit which the Court will confer upon the world at large will be a positive public International Law. In vain for Chief Justice Marshall to say, "The Court is bound by the law of nations, which is part of the law of the land" (*The Nereide*, 9 Cranch, 388), and for Lord Chief Justice Mansfield to say the law of nations is part of the common law of England (*Heathfield* v. *Chilton* [1767], 4 Burrow, 2016), and for the Privy Council to decide that an Order in Council repugnant to International Law is invalid (*The Zamora* [1916], 2 Appeal Cases, 77), if the International Law is vague and uncertain. Its uncertainty is brought very much into relief by one of the best nutshell definitions ever written, that of Lord Birkenhead, the Lord Chancellor, in his first little book on "International Law," perhaps the most concise compendium of principles and authorities in existence. In this he said:

> International Law consists of rules to control relations which have a legal rather than a moral character: its treaties and controversies have assumed a legal guise, encouraged by a general willingness to increase their apparent obligations, but it is habitually deficient in that coercive side of the term law, which is above all others essential and characteristic. All civilised nations agree that they are bound by its principles, and in the majority of cases find it convenient to observe them. On the other hand, they are not infrequently broken, and breaches may be consecrated by adding successful violence to the original offence. In reality the sources of its strength are three: (i) a regard—which in a moral com-

[1] *Transactions of the Grotius Society*, vol. vi, p. 93.

munity often flickers, but seldom entirely dies—for national reputation as affected by international public opinion ; (ii) an unwillingness to incur the risk of war for any but a paramount national interest ; (iii) the realisation by each nation that the convenience of settled rules is cheaply purchased, in the majority of cases, by the habit of individual compliance.[1]

Article 38 of the Statute of the Court provides that it shall apply—

(1) International conventions, whether general or particular, establishing rules expressly recognised by the contesting States ; (2) International custom, as evidence of a general practice accepted as Law ; (3) The general principles of law recognised by civilised nations ; (4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law. This provision shall not prejudice the power of the Court to decide a case *ex æquo et bono*, if the parties agree thereto.

This means that the Court will dispense its law according to principles which will gradually become the basis of a positive international Law. *Cursus curiæ est lex curiæ.*

Article 59 reads : " The decision of the Court has no binding force except between the parties and in respect of that particular case." If it is intended to bar case-law and the Anglo-American system of precedents, and to bring the Court's administration of justice more into line with the Continental code theory, it is bound to fail, if that is its purpose. In practice, Continental courts have due regard to precedent and analogy, although not so strictly bound to obey them as under the Anglo-American system. Case-law and precedent, however, are so truly founded upon good reason and logic and the experience of life that they will inevitably guide the Court in its judgments. This, coupled with the necessity (Article 56) of giving reasoned judgments, will in time create a definite *corpus juris* by which States will be able to regulate their mutual relations.

Practice and Evidence.—As for practice and procedure, it is inevitable that the Court must allow a wide latitude. If one considers the differences between the supreme judicatures of, to take only three instances, England, France, and the United States, it is plain that to adopt the procedure of any one is impracticable. England has a centralised judicature; in France the Ministry of Justice and the Court of Cassation act as links between autonomous

[1] *International Law.* By F. E. Smith, B.C.L.

provincial courts; in the United States the federal system rubs shoulders with the independent State courts. Probably the procedure will approximate as nearly as possible to that of the Judicial Committee of the Privy Council and the Federal Court of the United States, which are both in a full sense international tribunals. Already, however, a strong sub-committee of the International Judges, including Lord Finlay and M. Weiss, is engaged in drafting a scheme of procedure.

As to evidence, it would appear from Mr. James Brown Scott's commentary [1] on Article 50 that the examination of the witnesses has to be done by the Court in accordance with the procedure made familiar to many by the war trials at the Leipzig Supreme Court. If counsel want any questions put they will have to ask the presiding judge to put them. Presumably some sort of oath will have to be administered to witnesses, but, on the other hand, the Continental system of hearsay evidence is certain to be allowed.

[1] Carnegie Endowment: Pamphlet No. 35.

THE THEORY OF THE STATUTES.

[*Contributed by* WYNDHAM A. BEWES.]

WE shall not have proceeded very far in our study either of International or Comparative Law without coming in contact with expressions hitherto unfamiliar to us, such as *le statut réel, le statut personnel, le statut formel,* and we are puzzled, since in our system of law we have no terms which quite parallel the meanings conveyed by these expressions. Now here we touch the fringe of an age-long controversy, carried on with great eagerness and conviction, between the protagonists of the extreme theory of the territoriality of law and those who champion the thesis that the applicability of a law is less governed by the locality of a *res* than considerations which concern the person whose rights are in question. To us of to-day, these long-drawn hostilities between the two camps are chiefly of historical interest, and we are concerned much more acutely with the present result of these disputes than with theories which have been magnified, modified and then perhaps abandoned.

The riveting of the feudal system upon the surface of Europe had one of its most important results in augmenting the transcendence of landed property in a chain of land-holders from the King downwards; and this, in its turn, led legislators and lawyers to the conclusion that all law was territorial to the extent that an emigrant absolved himself entirely from his legal environment on passing the frontier, and an immigrant, on coming into the realm, immediately became subject to all local law to the exclusion of those both of his nationality and of his domicil.

We may stop here to mention the *droit d'aubain,* one of the direct results of pressing the technical theory to extreme practice. By it the assets of a foreigner dying in France were confiscated to the State, nor could unnationalised children who happened to be within the kingdom succeed to the estate of a nationalised father, while a national who had left the kingdom and renounced his fatherland could not succeed to assets left within the realm. This harsh law was not repealed until the Constituent Assembly met in 1789.

Now, it is very true that the territorial law did not operate so unjustly in the Middle Ages on the western part of the continent of Europe as one might suppose, and this for the reason that the old Roman Law remained the common law of the peoples, varied by local custom: and for the additional reason that the bulk of international commerce was conducted at the recognised great fairs, and questions which arose out of commercial transactions were decided by a tribunal of merchants according to the

law merchant, *i.e.* by the custom of the fair. But the world could not stagnate, and after the great migrations had finished and the on-coming population had settled down in their new territories, barred from further progress by the sea, it was but to be expected that international intercourse would once more develop and necessitate in practice some changes in the exclusive remoteness of the feudal nations. Commerce grew apace as the wants and supplies of civilisation increased : the unity of the dominant Church had its influence in combining the interests of its constituent races, great universities and other centres of learning attracted students from divers and far countries, merchant colonies were founded in foreign countries, as for instance by the Hanseatic League, and many other lesser but not inoperative movements began to interact between the peoples.

It will be remembered that at this time none of the three countries of the western continent was a united whole. Italy, France and Spain were fragmentary, Italy being notably disunited. This agglomeration rather than cohesion of participant elements occasioned the rise of bodies of fresh local custom, peculiar to a province or constituent State, and regarded for long by leading jurists as strictly territorial in their application.

The first break in this apparently impregnable wall of law was made by the Italian commentators known as the post-glossators of the thirteenth and fourteenth centuries (the chief of whom was Bartolo) when they invented the theory of the Statuus—meaning the laws and decisions of a particular country, divided into (*a*) those immediately connected with property and its incidents, (*b*) those dealing with persons, and (*c*) mixed. Other divisions were discussed but did not eventually survive. It is curious to note that in these discussions and divisions the *statut personnel* always referred to the law of the domicil, and not to that of the nationality. Among the later disputants Charles Dumoulin was perhaps the most distinguished (1500–1566), but d'Argentré (1519–90), a Breton President of the Court at Rennes, had a widespread and, as we may think, a maleficent influence in accentuating in his works the all-importance of the law of the *res*, with results from which we are still suffering in this country : for his theories found acceptance in Holland, and through the writings of Paul Voet, John Voet and Ulric Huter, had too ready acceptance by the jurists and judges of England. These authorities, unable to resist the force of circumstances which were becoming ever more interlaced between the nationals of different States, invented the grudging admission that the *statut personnel* might, when necessary, be allowed to operate by virtue of the comity of nations, an expression which was adopted in this country and made the theoretical basis of the recognition of the chief part of international private law. It is needless to argue at this time of day that this basis is unsatisfactory, even as a theory. The truth is that it is most convenient both to the normal incidents of life and to the demands of abstract justice that certain rights acquired under the system of law of one country should be recognised and enforced within the

dominions of another; and it is an idle pursuit to rummage among the dusty tomes of dead commentators for the purpose of ascertaining in great detail argumentations *pro* and *con* founded on any other basis. Let them rest. Whether their disputations hastened or hindered international intercourse on the whole is open to doubt. They meant well, and were giants in their day, and the long-deferred international results are better than the comparative isolations which the logic of the strict doctrine of sovereignty compelled and protected; but there is still much to be done, which is already long overdue, so let us leave those things that are behind and press forward to those that are before.

After this digression let us return to our muttons. England, under the lead of the Dutch writers (would that writers were always and also men of action), was at the beginning of last century certainly not in the vanguard of progress. Aliens, indeed, could by common law hold movable property other than a British ship, but it was not until the Act of 1844 (c. 66) that a statutory right was given them. Previous to the Aliens Act of 1870 no alien could hold an immovable or take by descent even an estate by the curtesy and an alien woman married to a British subject was not entitled to dower. Only since 1844 can a child born out of the King's dominions of a natural born mother take by devise, purchase, inheritance or succession. The law merchant had allowed an alien trader to hold leases of houses for personal residence and trade and this by the Act of 1844 was confirmed and extended to all friendly aliens. An alien could also dispose of his movable property by will or leave it to descend according to the law of his domicil.

But even after the Act of 1870 (c. 14) an alien is not on the same footing as a national in all respects as regards property. He is not, for instance, able to devise his British land by means of the form of will which is valid in his own country but informal by English law. Nor can he dispose of it *inter vivos* by a form which does not satisfy the territorial laws of England, and his capacity in all such cases is governed by the same law. Again, the Wills Act of 1861, c. 14 (commonly called Locke King's Act), passed in order to validate foreign-made wills disposing of personalty, in certain cases when they are or may be invalid by the law of the testator's domicil, only applies to the wills of British subjects; so that the will of an alien, valid by the law of the place when it was made, or by the law of his nationality, but invalid by the law of his domicil, is still invalid here. Surely it is time that our law was altered in both these defective respects.

During the centuries that elapsed previous to the French Revolution most of the questions which arose concerned the local operation of the customs of the different provinces of that kingdom, and the questions of the *statuts personnels* which arose concerned principally the subjects of the same king and were determined eventually by the law of the domicil. It is essential also to bear in mind that, up to the time of the French Revolution and the legislative changes which followed both in France and

other parts of Western Europe, family relations were for the most part governed by the Canon Law, a fact which obviated discussions of rights under differing systems of law.

"On the other hand, from the time that the theory of the *statuts* could only arise between subjects of different kings, domicil lost almost all its previous importance, yet one had to concern oneself with the tie which bound the individual to the State of which he was subject—that is to say, with his nationality."[1]

It is nationality which gives the right to vote and the right to be elected, and the conditions of the acquisition of nationality became an eager subject of controversy, the solution imposed by the Code Napoléon being indeed of a reactionary tendency.

But the well-discussed terms *statuts personnels* and *statuts réels*, useful enough as comprehensive terms for juristic use, could not well be utilised in the Code: which uses, however, words comprehensive enough to cover the rights included in the former when it says in article (3): "The laws which concern status and capacity of persons govern Frenchmen, even when residing in a foreign country." It might have been expected that the law would have rather declared that the personal law of foreigners as regards status and capacity govern foreigners even in France. At any rate the law has the distinction of being the first to lay down any legislative principles on the subject. As to the *statut réel*, the same article says: "Immovables, even those possessed by foreigners, are governed by French law." Another novel declaration appears in the same article, viz.: "The laws of police and public safety bind all inhabitants of the territory."

It is time now to take up the expressions *statut réel*, *statut personnel*, and find out what they have come to mean after these ages of debate, remembering that the adoption of the principle of nationality by the Code Napoléon released the latter from its tie to the domicil. I do not know that I can do better than take the definitions given in Escriche's *Legal Dictionary*:

"By *estatuto real* is meant the combination of the laws of a nation which govern the rights which refer to immovable property, without considering personal status or capacity." "The combination of the laws of a nation which determine the status and civil capacity of those who form part thereof is called *estatuto personal*." "*Estatuto formal* means the combination of dispositions which govern the acts of one who happens to be in a foreign country."

This latter is only of importance to our present purpose in that it accentuates the exclusion from the *statut personnel* of all elements except status and capacity, and I think I should add "condition." It is really desirable to make this addition, as foreign writers so often refer to condition as something apart from status, whereas we always include it in the meaning of status. With us, *status* means not only the qualities a man

[1] Valery, *Manuel de droit international*, p. 32.

has by nature, such as his sex, his freedom, his citizenship, but also such acquired qualities as are attained by marriage, adoption and so on, which are otherwise among those intended by the word "condition."

We must not, however, content ourselves with glancing at the tendency of the laws in the countries we have named, but must pay a tribute to the development of Italian law in modern times under the influence of Pasquale Mancini (*d.* 1888). The doctrines that he set himself to oppose were those maintained by Savigny and his followers, which in the main are those which have found favour in this country, by which we analyse every juridical solution into its elements and deduce from them the law which is applicable. Mancini seized upon the great innovation embodied in the Code Napoléon by which nationality was substituted for domicil as the basis of the *statut personnel* and generalised from this principle to the utmost extent.[1] He claimed that laws are made for nationals rather than for things, and should follow them to the farthest limits, outside their country as well as within, modified only by any expressed intention of the parties interested and of considerations touching on the principle of public order of the State to which the personal law is to be carried. The doctrines of Mancini, favoured by the state of the renascent Italy and by his own later commanding position in the Government, were welcomed with enthusiasm in his own country, and had a powerful influence immediately both in France and Belgium. The Italian Civil Code of 1866, in its Preliminary Dispositions, declares:

Article 6: Personal status and capacity and family relationship are governed by the law of the nation to which the persons belong. Article 7: Movables are subject to the law of the nation of the owner, saving contrary provisions of the law of the country where they happen to be. Immovables are subject to the law of the place where they are situated. Article 8: Intestate and testate successions, both as regards the order of succession, the amount of the successorial rights and the validity of the disposition, are governed by the national law of the deceased, whatever the nature of the assets and the country in which they are situated [i.e. these form part of the family law]. Article 9: . . . The substance and effects of donations and of dispositions by will are deemed to be governed by the national law of the givers. The substance and effects of the obligations are deemed to be governed by the law of the place where the acts have been made, and by the national law of the contractors, if they are foreigners and if they all belong to one and the same nation, saving in all cases proof of a contrary intention.

It will be seen that the Italian Code is more liberal than ours in that it allows a will valid by the law of the nationality to dispose of Italian immovables as well as movables.

The recent German Code adopted to the full the principle of national law, as far as Germans are concerned, both for capacity and family relations and succession (arts. 7, 14, 24). But a German claimant may claim German rights against the estate of a domiciled alien unless reciprocal rights of succession are granted by the nation of the deceased (25).

[1] Valery, *ibid* p. 38.

The law of Spain is particularly liberal. By article 11 of the Civil Code—

> The forms and solemnities of contracts, wills and other public documents are governed by the laws of the country in which they are executed.

So that a will made in England in English form is effective to devise land in Spain. By article 10—

> Movables are subject to the law of the nation of the owner; immovables to the laws of the country in which they are situated.
>
> Nevertheless, intestate and testate successions, both as regards the order of succeeding and the amount of the successorial rights and the intrinsic validity of the disposition thereof, shall be regulated by the national law of the person whose succession is in question, whatever be the nature of the assets and the country in which they may be found.

Nothing more liberal. But what is the national law of an Englishman, domiciled in Spain, where he dies intestate leaving personal property? Is this to be distributed on the principle that the deceased was an Englishman with no domicil, domicil being ignored in Spain for the purpose of succession to a Spaniard, or with an English domicil, which is contrary to the fact, or with a Spanish domicil, which is the fact, in which case Spanish law would be applied? Of course, the deceased's property in England would be distributed on the latter basis in any event, and it is probable that the Spanish Courts would follow suit.

As to real property left by the deceased in Spain, probably this would follow the Spanish local law of descent, which also the English Courts would adopt. A case to the contrary effect is now under appeal.

Although so much attention has been directed to the *statut personnel* —that is, to a man's status and capacity—this phrase, it is evident, does not impart all the rights which he may carry with him from one country to another. Status and capacity are, in fact, recognised in all civilised countries, being conditioned in some by the law of the domicil and in others by the law of the nationality. In our own view, the greatest disservice which was rendered to humanity by the Code Napoléon was perhaps the fact that it dislodged domicil in favour of nationality. The reason for this change was doubtless historic. France had just acquired a new unity, she was engaged in constant wars on all hands, and this pressure intensified the national life and with it the segregation of the French.

One most unfortunate result of the abandonment by French law of the law of the domicil in favour of that of the nationality, and the free adoption of the same change by many continental States, has been to cause a great uncertainty as to which law governs personal rights in a given case, and the invention of what is called rather inaccurately the doctrine of *renvoi* or *rétorno*. For instance, an Argentine domiciled in England dies leaving personal property in France. Both the Argentine Republic and England follow the law of the domicil, France that of nationality.

By what law should the French succession be governed? The French Courts refer to the Argentine law, by which a succession is treated differently from what it would be by English law to which the Argentine law refers. Should the French Court apply the municipal law of the Argentine, or that of England which the Argentine Courts would apply to the personalty left in that country, being the same law as would be applied by the English Courts to the personalty left in England? Are we, or are we not, to consider a succession as a *universitas rerum*?[1]

In dealing with the civil rights of foreigners, the Code imported from public law, to which alone it is properly applicable, the principle of reciprocity in the recognition of civil rights, a principle which has since widely spread, and which is unfortunately, by some obliquity of reasoning, often held to be just. It is, however, an extension into private life of the detached and somewhat hostile attitude which exists between States.

The use of the phrase *statut personnel* is apt to have the unfortunate effect of directing attention exclusively to status and capacity. After all, *status* is only a convenient word to indicate certain rights; and *capacity* is but a succinct expression to indicate the power that a man has to enforce his rights according to the law of his domicil, or of his nation, as the case may be. But he has many rights beyond these, rights which are just as much inherent in his person as those which are associated with status and capacity; and in these days the principal rights are the rights arising from contract. Here neither status nor capacity carries us very far; or rather, having ascertained the *statut personnel* of a contracting party, there still remain the greater problems which have to be solved in the determination of the relations which arise from contract. We live in the age of contract, and of contract affecting more and more the nationals of different States: and it is to the ascertainment of the right principles on which should be solved the conflict of laws in this department that we can best hope for some ultimate common ground for the treatment of concrete cases. The writer himself believes that the proper law for the governance of status and capacity is the law of the locality of the transaction, and trusts that at some future time there will be a common agreement to this effect. This will be an approximation to the *raison d'être* but not to the adoption of the law of the domicil, originally founded on locality, and an abandonment of the law of the nationality or domicil for the purposes of contract.

Since writing the above an article by M. F. Surville, honorary professor of international law (Poictiers), has appeared in vol. xlviii. of the *Journal du Droit International*, in which he discusses fully the historical influence of Bartolo, Dumoulin and d'Argentré respectively, but does not substantially differ from what is more shortly related of these jurists in the foregoing pages.

[1] See *Reciprocity in the Enjoyment of Civil Rights* (The Grotius Society), vol. iii, p. 133.

NOTES ON IMPERIAL CONSTITUTIONAL LAW.

[*Contributed by* PROFESSOR BERRIEDALE KEITH.]

Ireland as a Dominion.—Constitutionally the most interesting aspect of the Irish settlement is the fact that the Irish Free State owes its existence as a Dominion to a formal treaty[1] between duly authorised representatives of His Majesty's Government and plenipotentiaries representing Sinn Fein. There is, of course, no parallel for such a position in the earlier history of the Empire. The arrangement at Vereeniging of May 31, 1902, when the burghers laid down their arms on terms, was admittedly not a treaty, and His Majesty's Government pointedly refrained from calling it by that name.[2] Nor, of course, did it concede responsible government, and the actual concession of that form of government was made, as in the case of the other Dominions, at a time when the legal and constitutional supremacy of the United Kingdom was unquestioned. The closest parallel to one side of the transaction is the treaty of peace with the revolting American colonies in 1783, for by it the Imperial Crown conceded the national status and sovereignty of these States, which it had hitherto denied, and similarly the treaty of December 6, 1921, constitutes a recognition of Irish sovereignty. Fortunately, however, there is the vital distinction that the State thus recognised has agreed to accept Dominion status in lieu of claiming independence.

Divergences from Dominion Status.—At the same time the circumstances and the mode of the coming into being of the new Dominion have resulted in distinct derogations from Dominion precedents. In the case of the Dominions the maintenance there of Imperial military and naval forces after the grant of responsible government was regarded as at once right and desirable, and the gradual process of the withdrawal of these forces has been a matter of friendly arrangement dictated by the very proper desire of the Imperial Government to reduce its liabilities, and of the Dominion Governments to accept a fair share of the burden of defence. The Irish Treaty, on the other hand, contains provisions (Articles vi–viii) to secure Great Britain against possible hostility on the part of the Irish Free State. A further derogation is the provision (Article v) that the Free State shall assume liability for the public debt of the United Kingdom and for war pensions in a proportion to be fixed by arbitration in default of agreement; but the effect of this clause is indefinitely limited by the right to adduce counter-claims, which is conceded. More important probably is the prohibition (Article xvi) against the endowment of any religion or any educational or other discrimination on religious grounds; but this restric-

[1] *Parl. Paper*, Cmd. 1560. [2] *Parl. Paper*, Cd. 1096.

tion is made applicable also to Northern Ireland, and there is thus a very definite *quid pro quo* to explain the acceptance of the clause. The compact is silent as to fiscal matters, thus leaving it to the Free State to decide at her discretion what regime will be extended to other parts of the Empire, and the adoption of a new form of oath (Article iv) emphasises that the fidelity and allegiance of the members of the Parliament of the Free State are primarily to the constitution of the State, and only secondarily to the Crown.

Comparison with Canada.—While Canada has been chosen as the exemplar of Dominion status by which the rights of the Free State are to be measured, it is obvious that the parallel is defective. An essential feature of the Canadian Constitution is the fact that, save in minor details, not affecting essentials, it can only be changed by the action of the Imperial Parliament, and it would, of course, be absurd to expect such a condition to apply to the Free State. The Free State, on the other hand, is clearly entitled to ask for the same concession as to diplomatic representation which was made to Canada, though fortunately it has not yet been acted upon, and her admission as a member of the League of Nations will accentuate the necessity of some attempt to reduce to a coherent system the present state of affairs regarding the foreign relations of the British Empire. A further point of difficulty is presented by the Canadian request for the removal of territorial restrictions on her power of legislation, which naturally is equally necessary for the new Dominion.

Constitutional Appeals.—If the Canadian model is strictly followed, appeals will lie by leave of the Judicial Committee from the Irish Courts; but it may safely be anticipated that no such state of affairs would be acceptable to the Free State, and that Irish causes will normally be disposed of finally in Ireland. But obviously there will be need for some means of dealing with questions which must arise as to alleged violation of the terms of the treaty, for example regarding the endowment of religion, or religious disabilities imposed by Irish legislation, as well as with more political issues, such as disputes as to the observance of the military and naval clauses of the treaty. The most satisfactory solution of such difficulties would seem to lie in the establishment of the principle of referring every sort of dispute to the arbitration of a body including representatives of both sides and of the other Dominions. The adoption of some such system will in all likelihood become more and more desirable in respect of divergences of view between the Imperial and the Dominion Governments themselves[1]; but in the case of Ireland there are obviously much more immediate prospects of differences of opinion which cannot well be settled without the intervention of some form of tribunal whose decisions would be respected by either side. In questions of a mainly legal type the Judicial Committee could provide both British and Dominion arbitrators of the highest judicial status.

The Privy Council and the Canadian Provinces.—The value of the

[1] Keith, *War Government of the Dominions*, pp. 260, 261

appeal to the Judicial Committee to the Provinces of the Dominion, and the grounds of the objection to the abolition of that appeal entertained by the majority of Canadian lawyers,[1] despite certain notable exceptions, are strikingly exemplified in the decision of the Committee in *Canadian Pacific Wine Co., Ltd.* v. *Tuley and others*.[2] This appeal was brought from the Court of Appeal of British Columbia and asked for an order for the return of movable property of the appellants, including books and a store of liquor alleged to have been wrongfully seized, and for redress in respect of wrongful entry by police officers of the city of Vancouver into the appellants' warehouse. The action taken by the police arose out of the provincial Prohibition Act, and the essential point in the appeal was the contention that the Summary Convictions Act of the Provinces, under which it was sought to justify the proceedings of the police, was *ultra vires*. That enactment provides that, where a penalty or imprisonment is prescribed by any statute of the Province and no provision is made as to the manner of enforcement, such penalty or imprisonment shall be enforced on summary conviction before a justice, as if this were expressly so enacted in the statute imposing the sanction. This enactment was, it was contended by the appellants, *ultra vires*, since the Dominion Parliament had exclusive power, under the British North America Act, 1867, s. 91 (27), to legislate as to criminal law, including procedure in criminal matters. The issue was obviously a vital one, from the point of view of provincial autonomy, since an adverse decision would have struck at the whole basis of provincial power to deal with the liquor traffic in any effective manner. The Judicial Committee found no difficulty in upholding the validity both of the Prohibition Act itself and of the Summary Convictions Act. In the case of the former statute they held that it fell precisely within the principle of *Attorney-General for Manitoba* v. *Manitoba License Holders' Association*,[3] and indeed the conclusion was inevitable. As regards the latter Act, they drew a clear distinction between the Dominion power to legislate for the peace, order, and good government of Canada generally, and for criminal procedure in connection therewith, and the exercise of provincial authority in the case of the Summary Convictions Act. This they justified under the exclusive powers of the Province under s. 92 of the Act of 1867 to deal with " (14) the administration of justice in the Province, including the constitution, maintenance, and organisation of provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in these Courts ; (15) the imposition of punishment by fine, penalty, or imprisonment, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section " ; and " (16) generally all matters of a merely local or private nature in the Province." The decision, with its solution of the doubts which have been often expressed regarding the quasi-criminal legislation of the Provinces, has not gone without criticism

[1] See this *Journal*, vol. iii, pp. 184–189

[2] (1921) 37 T.L.R. 944.

[3] [1902] A.C. 73.

in the Dominion, but it is manifestly fully in accord with the decision in *Attorney-General for Ontario* v. *Attorney-General for the Dominion*,[1] and with the whole spirit of the British North America Act.

The High Court of Australia and the States.—While the Canadian Provinces have found a supporter of their privileges in the Privy Council, the Australian States have both during [2] and since the war found that the tendency of the High Court is to lean towards a generous extension of the powers of the Commonwealth to the diminution of the authority of the States. The degree to which this tendency has been carried is strikingly exemplified in the case of the *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. and others*,[3] in which it was held by a majority of the High Court that the awards of the Commonwealth Court of Arbitration are binding on the States in their dealings with their employees. The objections to such a situation are obvious enough, and it is not surprising that the decision has not been popular with the States as a whole. But there is a special reason for the dissatisfaction felt at the decision in that it reversed deliberately the contrary ruling laid down in 1906 in the case of the *Federated Amalgamated Railway and Tramway Service Association* v. *New South Wales Railway Traffic Employés' Association*,[4] when the High Court, applying to the States the principle asserted for the benefit of the Commonwealth in *D'Emden* v. *Pedder*,[5] held that the Commonwealth could not, save where expressly authorised by the Constitution, give to its agencies an operation which, if valid, would fetter, control, or interfere with the free exercise of the legislative or executive power of the States. The principle of the immunity of State instrumentalities thus asserted had until 1920 been regarded as beyond question,[6] and the alteration of view is explained simply by the change of personnel in the High Court, the members of which, of course, are appointed by the Commonwealth Government, and, accordingly cannot be expected to be strong supporters of State rights. The variation of view is clearly contrary to the principles regarding the following of earlier decisions expounded by the House of Lords in *Bourne* v. *Keane*,[7] but the High Court has, in doing so, exercised a privilege which is not enjoyed by the English Court of Appeal or the House of Lords, but is claimed by the Judicial Committee.[8]

The High Court and the Privy Council.—It is not surprising that it should have been felt in the Commonwealth that the case was precisely one in which the High Court should be asked to grant the necessary certificate permitting an appeal to the Judicial Committee. By the conjoint effect

[1] [1896] A.C. 348.
[2] Keith, *War Government of the Dominions*, pp. 306 ff.
[3] (1920) 28 C.L.R. 129.
[4] (1906) 4 C.L.R. 488.
[5] (1904), 1 C.L.R. 91.
[6] *Australian Workers' Union* v. *Adelaide Milling Co., Ltd.* (1919), 26 C.L.R. 465.
[7] [1919] A. C. 815, 874 per Lord Buckmaster.
[8] See *Levy* v. *London County Council* (1895), 2 Q.B. 577, 581; *Beamish* v. *Beamish* (1861), 9 H.L.C. 274; *Cushing* v. *Dupuy*, 5 App. Cas. 409.

of the Constitution (s. 74) and of Commonwealth legislation reserving constitutional cases to the High Court,[1] that Court has the unfettered power of making its own decisions final by refusing a certificate, and this power was duly exercised,[2] again by a majority decision, Gavan Duffy and Powers JJ. dissenting. The refusal can, of course, be explained only on the theory that constitutional cases should be settled in Australia, for obviously on the merits no stronger case for the grant of a certificate can be imagined than a majority decision reversing an earlier decision which had stood for fourteen years without question as part of the law of the Commonwealth. An ingenious suggestion, however, has been made by Mr. Arthur Robinson, Attorney-General and Solicitor-General of Victoria, in his Presidential Address to the Law Institute of Victoria on November 25 last. The Judicial Committee, he points out, is the final authority as to whether any case does fall within the class of causes on which, under s. 74 of the Constitution, the High Court may constitute itself the final Court. Such cases are those of the limits *inter se* of the constitutional powers of the Commonwealth and a State or States or of the States *inter se*, while the true point for decision in the *Engineers' Case*[3] is whether the State is a *persona*, bound to obey the commands of the Commonwealth. From this point of view there is, of course, no true conflict of powers, but the case permits also of the interpretation adopted by the High Court under which the point at issue is whether the employees of the State are solely under its legislative authority, or whether they fall under the authority of the Commonwealth in connection with its power[4] to legislate regarding conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limit of any one State. It is, therefore, unlikely that the Judicial Committee would consent to grant leave to appeal, especially as it has shown every disposition to respect wholeheartedly the authority of the High Court within its own sphere.[5] The only solution of the position from the point of view of the upholders of State rights is that suggested by Mr. Robinson, the modification of s. 74 at the revision of the Constitution which is now planned. But it would be idle to ignore the difficulties in the way of any such alteration, to which strenuous objections would certainly be raised by the Labour Party and by many supporters of the present Commonwealth Government. But the position indicates the very distinct disadvantages of the illogical compromise on the issue of appeals which was adopted by His Majesty's Government in 1900, acting on anticipations of the trend of events which have been entirely falsified in experience.

[1] See *Journ. Soc. Comp. Leg.*, vol. ix, pp. 269–80.

[2] (1921), 29 C.L.R. 406.

[3] 28 C.L.R. 129.

[4] Constitution, s. 51 (xxxv).

[5] See especially *Attorney-General for New South Wales* v. *Collector of Customs*, [1909] A.C. 345.

SOUTH AMERICAN NOTES.

[*Contributed by* WYNDHAM A. BEWES, ESQ.]

Immigration Laws.—Mr. Wyndham Bewes writes that a volume has been issued containing the Convention and documents resulting from the International Police Conference held at Buenos Aires in February 1920 by representatives of the Republics of Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay on the invitation of the Argentine Government. By the Convention, dated February 29, 1920, the contracting countries undertake to provide mutual information respecting (*a*) attempts and acts tending to subvert social order, (*b*) publications of the same nature, (*c*) legal and administrative decisions directed to prevention or repression of such acts, (*d*) the preparation and perpetration of ordinary crimes, (*e*) individuals dangerous to society, (*f*) honourable persons at their request, (*g*) the bodies of unknown persons accompanied by finger-prints.

By Art. 2 dangerous persons (*e*) are defined with reference to crimes against property or person, individuals who habitually and for profit carry on the white slave trade, and agitators and inciters to crime. By Art. 3 the kinds of information are detailed. With the object of forming an International Archive of Information duplicates of all information are to be sent to the Argentine Government, whether this directly interests it or not (Art. 4); but from these prescriptions political acts and the lawful movements of workmen in relation to the struggle between capital and labour are excluded (Art. 5).

By Art. 7 the departure and expulsion of dangerous individuals are to be communicated. By Art. 8 police, on request, will take all proper steps to investigate a foreign crime. By Art. 10 all honourable persons are to be provided with their certificate of identity verified by finger-prints. The Convention (Art. 12) is recognised as administrative and therefore subject to any restrictions by law or regulation; and subject also to ratification (Art. 15).

Subject to reservations made by the delegates of Brazil and Uruguay, certain recommendations were agreed with reference to (1) the prompt provisional arrest of fugitive criminals, (2) frontier police, (3) entrance of foreigners, (4) periodical visits of officials, (5) postal and telegraphic facilities.

As regards (3) it is recommended (*a*) that minute information of any expulsion be given to the authorities of the country of the expelled person;

(*b*) that passports be refused to dangerous persons; (*c*) that each country accept its expelled nationals; (*d*) that adequate postal and customs measures be adopted for the prevention of anti-social propaganda; (*e*) that foreigners unprovided with a police certificate of five years' good conduct be rejected; (*f*) that the captains and owners of ships carrying uncertificated foreigners be fined, and the ships detained until payment; (*g*) that transients be subject to a less stringent documentary requirement.

A Mexican International Law Review.—The *Revista Mexicana de Derecho International* of 1920 (vol. ii) contains much valuable material for discussion, and among other contributions is to be noted the address pronounced in the University of Montevideo on April 20, 1920, by President Baltasar Brum to the law students (p. 227). His conclusions (p. 246) are as follows: Pan-American politics should be principally based on the following foundation: (*a*) an injury inflicted by extra-continental nations to the rights of any one of the American countries should be deemed an injury to each, and should originate uniform and common resistance; (*b*) without prejudice to joining the League of Nations, an American League should be constituted on the basis of complete equality of all the associated countries; (*c*) no matter which, by the laws of a country, should be judged by its judges or tribunals, can be withdrawn from its natural jurisdiction by means of diplomatic demands, which should only be permitted in an evident case of denial of justice; (*d*) every foreigner's child born on the American continent should have the nationality of the country of birth, unless, having attained majority and being in the country of origin, he express his desire to choose the nationality thereof; (*e*) all controversies, of whatever nature, which may arise between American countries, should be admitted to the arbitral decision of the League, when they cannot be resolved directly or by amicable mediation; (*f*) when an American country has any controversy with the League of Nations it may request the co-operation of the American League.

President Brum relies on this co-operation, as an off-set to what, he thinks, is the insufficient representation of South America in the League of Nations.

On pp. 382–402 is reproduced an article by Professor Amos S. Hershey, of the University of Indiana in the *American Review of International Law* (vol. xiii) on the "doctrine" of immediate pursuit, *i.e.* in land operations, with immediate reference to the so-called "punitive expedition" of March 9, 1916, to Carrizal and the occupation of Ciudad Juárez in 1919. Previous similar expeditions in 1836, 1856 and 1877 gave rise to protests and the ultimate reciprocal agreements of 1856 and 1882. The case of the *Caroline* during the Canadian Rebellion of 1837 is also referred to. The editor denies the existence of the doctrine and the analogy of the pursuit of a delinquent vessel on the high seas.

Nationality in Mexico.—Mexican nationality, as affected by the Constitution of 1917, is fully treated by Señor G. Fernández MacGrégor,

who discusses its effect on the Foreigners' Law of 1886. Among other conclusions he finds that the children of a naturalised father who happens to be born abroad are not Mexican citizens, although the children so born of a natural born Mexican are themselves Mexicans. The children born in the country of a foreign father were formerly Mexicans if they failed to claim their father's nationality within a year after attaining majority (twenty-one); but now they are foreigners unless within the same time they claim Mexican nationality. The *jus sanguinis* has thus prevailed in this respect.

As regards the attainment of majority, the writer calls attention to the recently promulgated Law of Family Relations, which in Art. 480 enacts the following very notable and unique change: "Foreigners who are under age and resident in the country are deemed to be of age as soon as they have completed twenty-one years, whatever be the age fixed for majority by the laws of the country of their origin; they will therefore, as soon as they reach the said age, possess full capacity to dispose freely of their person, and of the property which they possess in the country, and to contract obligations of all kinds which are to be enforced therein."

"Revista de Derecho."—The 17th volume of the *Revista de Derecho* (Santiago de Chile) contains at least two articles which seem to come within the ambit of the *Journal*. The one of minor importance is that by Professor Alessandri on the question whether a foreign "juridical" person can be transferee of property in Chile. After quoting and discussing the material articles of the Civil Code he concludes that such as are subject to private law can only accept such property when they have received executive recognition under Art. 546, and that unrecognised bodies are incapable of even taking a legacy. Art. 546 says, "Foundations and corporations which have not been established by a law, or which have not been approved by the President of the Republic with the assent of the Council of State, are not juridical persons." This difficulty does not, of course, prevent from being transferees such commercial companies as have established agencies in Chile with the authorisation of the President of the Republic as required by Art. 468 of the Commercial Code. The chief part of the article is, however dedicated to discussing such entities as are under public law, such as sovereign States, municipalities, etc., and the learned Professor gives his opinion that such are under no disabilities imposed by the law of Chile and that their capacity is solely governed by "the law of the country to which they belong."

In the same volume is an interesting, but not exhaustive, disquisition by D. Roberto Butrón on "Indemnity for Moral Damage in Chilean Law." This is of interest to us, as the author quotes authorities in other countries, such as France and Italy, where such damage is recoverable although the provisions in these Codes, as in the Chilean, are extremely defective in this respect; so much so, indeed, that the matter has been

one of prolonged controversy. It now appears clear that a parent can recover damages in Chile for the culpable killing of his child, *e.g.* by railway accident, although no money loss is proved: a result which was, in this country, only obtained by special legislation. However, it is not to be wondered at that the weight of authority in most countries is in favour of indemnifying moral damage in spite of the real difficulty of appraisement, since the Roman law, to which most civilised systems are indebted, contained provisions directed to protect a person's honour, so that the principle was from the earliest times admitted. The author quotes decisions in other countries under which damages were recovered, and among them an Italian case in which a wife was condemned to pay damages for the suffering caused to her husband through her adultery, and a Brussels case in which a mother recovered damages for her grief occasioned by wounds inflicted on her child. Curiously enough, a Catania Court gave damages for physical suffering under the head of moral damage. The author falls into the error of saying that English Courts only give damages for moral injury in the case of seduction, overlooking Lord Campbell's Act, and our law of Libel and the Slander of Women Act; and the further, and perhaps illogical, practice by which juries do, in fact, enhance damages where serious moral damage occurs, although none may be specifically awarded on that account.

NOTES.

The Late Lord Bryce.—There is no one to whom the Society of Comparative Legislation owes a heavier debt of gratitude than the late Lord Bryce. He was an original member of our Council. Our objects and aims always had his warmest approval. From the outset of our labours he followed their course with close and sympathetic attention, for they lay within the field to which he had devoted the greater part of his thoughts and of his many-sided life. He was always ready to help us with his ripe wisdom, with his unrivalled and inexhaustible knowledge. The dominant passion of his life was to promote intercourse and friendship between the different peoples of the world by increasing their knowledge of, and their interest in, each other, and he knew that, within our limited sphere, this was also the object aimed at by our Society. He was a great citizen of the world, and the whole civilised world is the poorer for his loss. No body of men has greater reason to deplore it than the Society of Comparative Legislation. Of what his loss means to one who was privileged to enjoy his life-long friendship I do not venture to write.

C. P. Ilbert.

Maintenance Orders (Facilities for Enforcement) Act, 1920.—It is officially announced that an Order in Council has been issued extending the Maintenance Orders (Facilities for Enforcement) Act, 1920, to the Colonies and Protectorates named below. The Act provides for the enforcement in England and Ireland of maintenance orders made by a Court in any part of His Majesty's Dominions outside the United Kingdom to which it extends, and the Legislatures of the undermentioned Colonies and Protectorates to which it has now been extended have made reciprocal provisions for the enforcement therein of maintenance orders made by Courts in England and Ireland: Ashanti; Ceylon; Hong Kong; Gibraltar; St. Lucia; Southern Rhodesia; Uganda; the Island of St. Vincent; the Colony and Protectorate of Sierra Leone; the Somaliland Protectorate; the Zanzibar Protectorate; the Colony of the Gold Coast; the Colony of the Gambia; the Colony of Trinidad and Tobago; and South Australia.

North Borneo Legislation.—In the "Summary of Legislation in North Borneo," published in the issue of the *Journal* in July 1921, on page 210, line 4, the words "dispose of articles" should read "dispose of rations."

Sovereign Colonies.—"This controversial topic," writes Professor Berriedale Keith, "forms the subject of a characteristically vivacious

and well-argued article by Dr. T. Baty, in the *Harvard Law Review*,[1] the effect of which is to demonstrate that sovereign independence and the unity of British citizenship cannot be reconciled. There is, of course, much to be said for this contention ; in the domain of the conflict of laws English law declines to admit of any distinction of nationality within the British dominions ; if it be objected to Dr. Baty's argument, from the decision in *Gibson* v. *Gibson*,[2] that that case is prior to the Paris Conference and the new status of the Dominions, the reply is that the Administration of Justice Act, 1920, equally proceeds on the basis that there is but one nationality possible within the Empire.[3] Moreover, for purposes of international law the unity of British nationality is still upheld ; the British Government claims, and the Japanese Government has so far admitted, that every British subject is entitled to the privileges of entry into Japan enjoyed under the Anglo-Japanese commercial treaty, even although the treaty may not have been made applicable to the Dominion of which he is a native, or in which he is domiciled. But there are solid arguments on the other side. Dr. Baty is forced to enunciate the doctrine that the signature "for" the Dominions of the peace treaties was ornamental only, and that the British Empire is the sole British member of the League of Nations. To this view there is a fatal objection in the fact that none of the Dominions so understands the matter, nor is such an interpretation open to any of the Members of the League of Nations, though it is possible that the United States thus regards the signature for the Dominions of the quadrupartite treaty of December 13, 1921, regarding matters in the Far East. What, perhaps, is more important is the fact that Canada, by her Canadian Nationals Definition Act, assented to on May 3, 1921, has deliberately laid down what persons shall be treated as Canadian nationals, while it has been made clear that their character as Canadians is strictly consistent with, and subject to, their character as British subjects. The action of the Dominion is clearly a logical outcome of her membership of the League of Nations, and was in part motived by the necessity of avoiding difficulties under the Convention for the Establishment of a Court of International Justice. That instrument allows each Member of the League to nominate four candidates, including not more than two of its nationals, and it is clear that it would be unsatisfactory if all British subjects were to be deemed Canadian Nationals for the purpose of this requirement.

"In a sense, therefore, Dr. Baty's problem has solved itself, but it must be admitted that independent action by Canada might well have been postponed, and an effort made at an Imperial Conference to agree as to some definition of subordinate forms of British nationality which could be applied throughout the Empire. The extension of Dominion status to the Irish Free State renders the problem the more pressing,

[1] xxxiv. 837–61 ; *Canadian Law Times*, xli. 677–704.
[2] [1913] 3 K.B. 379.
[3] See this *Journal*, iii. 311

while the same event must serve to emphasise the existence of a novel sovereign character appertaining to the several parts of the Empire. This again raises a further problem ; Dr. Baty insists, with perfect justice, that normally there is no legal means of adjusting disputes between different parts of the King's dominions, the circumstances of the Commonwealth being exceptional in this regard. With the advent of an Irish Free State the necessity of some standing Court of Arbitration will become more pressing than ever, for it would be most unfortunate if disputes within the Empire were to be carried to the International Court."

Comparative Public Law.—An interesting discussion of this topic, and the fundamentals of its study, by Mr. Ludwik Ehrlich is included in the November issue (pp. 623–46) of the *Columbia Law Review*. When the far-reaching nature of the topic is considered, it is hardly surprising that few efforts should have been made to deal with the subject, and it is impossible not to agree with Mr. Ehrlich that a necessary preliminary to any effective treatment must be the compilation on a uniform basis of handbooks of the public law of all the important countries of the world. These works would, to be really useful, have to treat the subject not merely analytically, but in such a manner as to show the relation of political institutions to the life of the society and the historical conditions to which they owe their origin and development. A further desideratum is the production of collections of constitutional documents with the necessary explanations. Both of these desiderata offer serious considerations of expense, but the project might well be commended to the consideration of the Carnegie Endowment. At a time when so many new state constitutions have been brought into existence, information of this kind would be of special value in assisting legislators to effect the modifications of which these constitutions, as a rule hastily evolved under pressure of immediate necessity, stand greatly in need.

Apart from the main thesis, Mr. Ehrlich's article is incidentally full of valuable references ; it is interesting to learn how far the process of following judicial decisions is extending on the Continent. Reference is made to the freedom of the Judicial Committee to depart from its own decisions ; an allusion might have been added to the curious anomaly by which the Empire still maintains two Courts of Final Appeal.

Decisions of the Mixed Arbitral Tribunal.—Reference has already been made in this Journal to the Reports of cases decided by the Mixed Arbitral Tribunals under the Treaties of Peace.[1] Since then parts ii to iv of the Reports have been published, and many judgments of general importance have thus become available. Several of these—*Villemejane* v. *Germany* (p. 90), *Bignon* v. *Germany* (p. 93), *Huret* v. *Germany* (p. 98), *Marqua* v. *Germany* (p. 104), *de Creutzer* v. *Germany* (p. 156), and *Sachs* v. *Germany* (p. 215)—are decisions of the Franco-German Tribunals upon claims for compensation under Article 297 (*e*) of the German Treaty, and they have

[1] *Recueil des Décisions des Tribunaux Arbitraux Mixtes.* (Librairie de la Société du Recueil Sirey, Paris, 1921.)

gone far to elucidate the meaning of the phrase "exceptional war measures" found in that Article. Another case—*Hallyn* v. *Basch* (p. 168)—involved the application of Article 299 (*a*), which provides that any contract concluded between enemies shall be regarded as having been dissolved. Hallyn, a French subject, had "Yemis" certain pictures with Basch "en commission" before the war. Basch was a German national and the war dissolved the contract. Was Basch bound to preserve and restore the pictures? The Tribunal held that upon the dissolution of the contract Basch became "dépositaire," and liable as such, the effect of the obligation of the contract being to give rise to an obligation different from that contemplated by the contract. But among the most interesting decisions are two of the Anglo-German Tribunal, which are to be found in part v. In the first of these—*Great Eastern Railway Company* v. *Mosse* (p. 282)—the claimant was indebted to the respondent at the outbreak of war, and had a right to recover part of the debt from a Dutch railway. The Dutch company paid to the respondent during the war its share of the debt; but he nevertheless recovered judgment in the German Courts for the whole amount, and obtained a decree of distraint against moneys standing to the credit of the claimant at a bank in Cologne. The Tribunal, finding that it had jurisdiction under Article 304 (*b*) of the Treaty, ordered repayment to the claimant of the amount paid to the respondent by the Dutch company, with interest.

In the second case—*Huth & Co.* v. *Fahr & Setzer* (p. 286)—the claimants, a London Accepting House, had agreed before the war to accept bills for the respondents, a Hamburg firm. It was a term of the contract that the Accepting House should not have to pay out against such acceptances unless and until they were put in funds, and that all costs and risks should be for the account of the respondents. The claimants accepted in July 1914 two bills which matured after war had broken out, and the respondents were thereby prevented from transmitting funds. Accordingly, the claimants obtained advances to meet the bills from the Bank of England bearing interest at 2 per cent. above bank rate. The respondents admitted their liability to repay, but disputed the rate of interest. The Tribunal, however, found that, in view of paragraph 7 of the Annex to Article 303 and the contract between the parties, the German firm must indemnify the Accepting House against the whole of its liability to the bank.

The Principles of Income Tax.—"Mr. G. H. Crichton has written a very interesting and suggestive article on 'Co-operative Societies and Income Tax' in the January number of the *Law Quarterly Review*. It raises matters," writes Mr. G. R. Stirling Taylor, "which lie at the basis of taxation, and concern many more than co-operators and their ideals of thrift and large dividends. Indeed, so far as the co-operators are affected, there is a certain humour in the decision of the inquiring Commission (appointed by the Inland Revenue) that it is advisable to take away their privileged exemption from the tax, because they will find that they are

scarcely likely to have to pay any! If the vast majority of the co-operative society members are not liable to income tax, it certainly will not seriously inconvenience them to know that they would have to pay if they had reached the taxation limit. Nevertheless, the problems involved cannot be dismissed in this light-hearted way; and the question whether the dividend of a co-operative society should rank with the interest of a limited liability company in the matter of income tax assessment must be faced and answered. The object of the income tax is to make each pay his contribution to the State roughly in proportion to his ability as measured by his income.

"It is fairly evident that, so far as the ordinary member of a consumers' co-operative society is concerned, a dividend is as much a "profit" as the interest paid to the shareholders of an ordinary commercial company. The low sale prices and the resulting dividends are alike (in the main) due to the good management and work of the paid servants of the store. If this be so, surely the dividend is a profit to the shareholding members of the society, and it is hard to avoid the conclusion that the ordinary tax should be paid. Probably, in any case, the best solution would be to aim at selling everything at the cost price of production; whereupon, of course, the dividends would not be there to raise awkward questions. The shareholding co-operative members would then be left face to face with their working staff, and would have to decide whether their low prices were due to underpaid labour or to so much secret virtue in the principles of co-operation itself.

"But there is another large and fundamental principle involved in this question. Taxation is a most convenient method of encouraging one social system or institution and discouraging another. If it should be decided that the co-operative system is a better manner of conducting industry than the limited liability company method, then it might be perhaps advisable to encourage the co-operators by exempting them from certain forms of taxation from which they had no right to exemption as a matter of strict financial logic. The chief end of taxation, like the chief end of all government, is to obtain the most satisfactory resulting human beings; and when this matter of the taxation of co-operative funds is discussed it will be well if more than the revenue officers and their account-books are consulted. Government has always been essentially a matter for philosophers rather than for bureaucrats."

American Journal of International Law.—The Washington Conference was impending when the October number of the *American Journal of International Law* appeared. Accordingly the Editor-in-Chief, Dr. J. B. Scott, devoted his opening article to armaments, and to the earlier projects for their limitation. He recalls the unsuccessful attempt made at the Hague in 1899, a less-known and now expired agreement between Argentina and Chile, and the agreement between Great Britain and the United States restricting naval forces on the great lakes, which stands, and has stood for more than a hundred years. Of

the remaining articles in this number William S. Carpenter's is historical —" The United States and the League of Neutrals of 1780 " is its title— and another by Pedro Capó-Rodriguez discusses "Colonial Representation in the American Empire." In a third, which is a translation from the French, Tor Hugo Wistrand adds a chapter to the already voluminous literature upon the Balance of Power. Chandler P. Anderson, in the *Editorial Comment*, analyses the Treaty of Peace between the United States and Germany—a service to the many lawyers in Europe who have given too little attention to this important document, and James Brown Scott describes the election of the judges of the Court of International Justice. The *Supplement* contains the text of three conventions signed during the Peace Conference at Paris and also of the Pact of Union of Central America.

NOTICES OF BOOKS.

MR. JUSTICE HOLMES'S PAPERS.[1]

SEEING that the name and fame of Mr. Justice Oliver Wendell Holmes are known almost as well in England as in America, it is needless to bespeak for any work of his the attention of English students and scholars. More than forty years have passed since his little book on the Common Law was recognised as a classic, and classic it remains. Of the addresses contained in this volume, ranging over a wide field, some are concerned with purely legal topics. Others relate to matters which are professional rather than technical, dealing with the status and functions of the lawyer. Several are biographical appreciations of illustrious men.

Others, again, rise into the sphere of metaphysical philosophy. All, whatever their subject, are pervaded by a philosophical spirit, large and luminous, such as we may suppose one of the great lawyers at Rome in the days of Augustus to have applied to the great problems of ethics in the leisure he allowed himself from the composition of technical treatises and the delivery of *responsa*. Justice Holmes is more of an Academic than a Stoic in his metaphysics, and occasionally verges on Pyrrhonism. But his reasoning, whether it moves along philosophical or purely legal lines, is always exact, penetrating, and subtle, going straight to the centre of the question, and leaving the reader in no doubt as to his view. In very few authors does one get so much sound and original thinking to the page. He is never dull. Whatever the theme, his writing has a literary charm rare in legal writers, of whose style critics usually think enough has been said when it can be praised for precision and lucidity. He can plant a flower and make it bloom even in crevices among the stones of "a dry, parched land, wherein no water is."

We have no space to comment upon any of these discourses, but the non-professional reader who does not care to trudge over the arid regions of law may be recommended to read such an essay as that on Montesquieu, which gives in a few pages singularly fresh and instructive impressions of a great writer. Feeling how much the author of these addresses might have contributed to biography and criticism, many a reader will recall the words of Pope when he regretted that his friend

[1] *Collected Legal Papers of Oliver Wendell Holmes, one of the Justices of the Supreme Court of the United States.* (London: Constable & Co., 1920.)

Murray—not yet the great Lord Mansfield—had chosen to be a jurist when he might have been another Ovid.

BRYCE.

WORKS ON INTERNATIONAL LAW.

AMONG the more important contributions which have been made to the literature of international law since the close of the Great War is a new edition (the third) of Volume I of the late Professor Oppenheim's well-known treatise on *International Law* (Longmans, Green & Co.). The new edition is largely the work of Mr. R. F. Roxburgh, one of the more promising of the younger English writers on international law and at present a London barrister. Mr. Roxburgh was a student of Professor Oppenheim at Cambridge, and his work has been a labour of love for the great master whom he admired, as all his students did. Professor Oppenheim was engaged in the preparation of the new edition of his treatise when death took him away and deprived the science of international law of one of its greatest devotees and masters. With the notes he left behind Mr. Roxburgh finished the work the author had begun. So far as possible Mr. Roxburgh used the notes left by the author, making only such changes and additions as seemed necessary, and always endeavouring to preserve the thought of the author and to express the views that he would have expressed had he lived to complete the task himself. Mr. Roxburgh has added some new sections written entirely by himself; others he has rewritten from notes left by Professor Oppenheim. Since Volume I of the treatise deals with the law of peace the changes made necessary by the Great War were not numerous or important. Some alterations and additions, however, were made necessary by the Treaty of Versailles, and particularly by the Covenant of the League of Nations. A valuable chapter on the League of Nations, written by Professor Oppenheim himself, constitutes perhaps the most important contribution to the new edition. There is also an analysis of the Treaty of Versailles, a revision of the chapter on "Aerial Navigation," certain changes in the sections dealing with the status of the self-governing dominions, a list of the more important recent law-making treaties, a catalogue of Professor Oppenheim's writings, and an appreciative preface by Mr. Roxburgh.

A task of an entirely different character is that which has been undertaken by a group of distinguished English authorities on international law who, feeling keenly the need of an English periodical in this field, have established the *Year Book of International Law*, the first number of which has now appeared under the editorship of Mr. Cyril M. Picciotto, a former Whewell scholar at Cambridge and now a barrister of the Inner Temple (pp. vi. + 292, Henry Frowde and Hodder & Stoughton, London). The *Year Book* has been established, we are told in the introduction "because its promoters feel that a wide knowledge and comprehension of the subject [of international law] is essential at the present

time, and that a British periodical devoted to international law would help to this end." The editor adds that the war has left in the minds of many people the belief that international law is a thing of the past, and it therefore behoves all those who believe that it is still a living force to work for that "firm establishment of the understandings of international law as the actual rule of conduct among governments," which, in the words of the Covenant of the League of Nations, the allied nations are pledged to regard as a means of achieving international peace and security. It is further added, and very properly, that if international law is still a living force, as it certainly is, it is equally true that the experiences of the last few years have shown that much that was once regarded as definitely established must now be re-examined in the light of modern developments, which have vitally affected the old rules of war and neutrality and made new rules necessary.

The *Year Book*, in the main, consists of a series of articles on different subjects contributed by a group of distinguished English authorities in the field of international law. The first and one of the most important is a paper by Sir Erle Richards on "The British Prize Courts and the War." At the outset he points out that the British Prize Courts during the late war were called upon to decide important questions arising out of new and novel conditions such as were unknown to Lord Stowell. But, in deciding these questions, the Prize Courts did not make new law: they accepted and developed the principles laid down by Lord Stowell so as to make them applicable to the new and changed conditions of the late war. At the outset the Privy Council, the final Court of Appeal in prize cases, asserted a remarkable independence by a declaration to the effect that the British Prize Courts were not bound by Orders in Council issued by the Executive when such orders were contrary to the established principles of international law; but the author regrets that the Prize Courts themselves took the position that enemy subjects had no right to appear and defend their claims except where the right was granted by treaty or international convention. In this respect the German Prize Courts adopted a more liberal view, and allowed enemy subjects to appear before them in all cases, whether the claim asserted was in pursuance of a specific treaty right or not. Sir Erle Richards points out in his article, and very properly, that the late war demonstrated conclusively the impracticability of maintaining the old distinction between absolute and conditional contraband and of applying different rules to the transportation of the two classes of goods. He also shows, and with equal conclusiveness, that if a belligerent has a right to prevent the carriage of contraband direct to the enemy, he has an equal right to prevent its carriage indirectly through the intermediary of adjacent neutral ports. In short, the ultimate and not the immediate destination is the proper test, and it makes no difference whether the voyage is "continuous" or whether there are two or more voyages, or whether one is by sea and the other by land. He also adds, with perfectly

just reason, that, in such cases, the captor must be allowed to produce extrinsic evidence to show the real destination of the goods and not be limited to the production of evidence afforded by the ship's papers, since, as the late war showed in many cases, the papers often do not reveal the true destination. Regarding the more fiercely controverted question as to the right of a belligerent to disregard the rules of international law established for the protection of neutrals, in order to retaliate against an enemy who disregards the laws of war, the argument of the learned author is less convincing. He readily admits that the right claimed, if allowed, would enable belligerents to override the whole of the protection which the common law of nations and treaties have established for the benefit of neutrals. On the other hand, if one belligerent disregards the limits set by the law, in order to promote his own ends, his adversary must be allowed an equal freedom, since he cannot be compelled to fight at a disadvantage. In fact, he asserts, the right of retaliation against neutrals, as it was asserted in the cases of the *Stigstad* and the *Leonora* in 1919, was a settled doctrine of the English Prize Courts, having been recognised by the higher prize tribunal during the Napoleonic Wars. Professor Pearce Higgins, in a paper entitled "Submarine Warfare," maintains, very correctly in my opinion, that the questions raised by the employment of the submarine as an instrument of destruction do not require the making of new laws, but simply the application and observance of rules long established, and until the recent war generally observed and respected. He recognises, as the authorities generally do, and as the naval codes provide, that enemy merchant vessels may be legitimately destroyed subject to certain conditions and restrictions, one of the oldest of which is that provision must be made for the safety of the crew and passengers. He analyses in turn the arguments put forward by the Germans in defence of the claim for a special immunity for submarines from the obligation to conform to this humane and long-established rule, and concludes that no such immunity can be recognised; in short, new inventions can have no effect on long-established rules founded on considerations of humanity; the employment of new instruments of destruction must be adjusted to the law, and not the law to the instrument. He might have gone further, and laid down the rule that the employment of submarines, at least in their present state of development, for the destruction of merchant vessels should be prohibited, for the good reason that they have no facilities for providing for the safety of crews and passengers; in short, it is practically impossible for them to conform to the law of nations respecting prize destruction, which is at the same time the law of humanity.

In a paper entitled "The Peace Treaty in its Effects on Private Property," Dr. E. J. Schuster analyses the provisions of the Treaty of Versailles which affect private property and private rights. These provisions are of two kinds: (1) those which deprive individuals of property and rights, and (2) those which confer property and rights. The

main question which remains to be answered, he says, is whether the treatment of private property after the conclusion of peace, in the manner exemplified by the Treaty of Versailles, set an example which ought to be followed in the future. He leaves us in doubt as to his own opinion, although he states the arguments for and against the policy adopted. The experiences of the late war, he adds, destroyed the last remnant of any foundation for the distinction between the armed forces and the unarmed population.

It is quite impossible, within the limits of this review, to summarise all the excellent papers which make up the *Year Book*. It must suffice only to mention the article by Sir Geoffrey Butler entitled "Sovereignty and the League of Nations," the article by Professor Charteris on "The Legal Position of Merchantmen in Foreign Ports and National Waters" (in which the author analyses and compares the Anglo-American rule with the French rule), the article by Mr. Norman Bentwich on "The Legal Administration of Palestine under the British Occupation," the article by Sir John MacDonell on "International Labour Conventions," and two valuable unsigned articles, one on "Changes in the Organisation of the Foreign and Diplomatic Service," and the other on "The League of Nations and the Laws of War," in the latter of which the author points out the difficulties which stand in the way of the adoption by the League of Nations of a fixed code of rules governing the conduct of war. The task which the League of Nations should undertake, in his opinion, is rather the building up of a new body of international law of peace. In short, it is by the development of the law of peace rather than by attempts to codify the laws of war, that a stable international law can be built up by the League of Nations.

In addition to formal articles, the *Year Book* contains an appreciation of the life and work of the late Professor Oppenheim by his friend, Mr. E. A. Whittuck; notes on the late Professors Lammasch, T. J. Lawrence, and Pitt Cobbett—four eminent English authorities on international law who have recently been taken by death; a list of international agreements concluded between various Powers during the years 1919–20, and a valuable bibliographical list of the recent literature of interest to students of international law.

Altogether the *Year Book* is a very useful and creditable addition to the periodical literature of international law; its promoters have done a distinct service in establishing it, and it is to be hoped that it will receive the support of all those who believe in the cause which it is designed to promote.

James W. Garner.

University of Illinois.

DELEGATED LEGISLATION.

In a slender and eminently readable volume Mr. Cecil Carr has published the substance of three lectures which he delivered at Cambridge in April 1921 on Delegated Legislation. He examines its effect on the statute-book and states the case for delegation, discusses the safeguards against its abuse, describes and illustrates the forms which it assumes and the mode in which it is published, and traces its historical development. No one could be better qualified to perform this task. As assistant to Mr. Alexander Pulling, the editor of the *Statutory Rules and Orders*, he has acquired practical familiarity with the machinery and working of this class of legislation, and understands and appreciates the importance and difficulty of the problems which it raises. And he is master of a style which makes his treatment of a technical subject easy and attractive reading.

Bentham's picture of a "complete code of laws," which was to supply the ordinary citizen with all that he need know about the law is, as Mr. Carr observes, an ideal which daily grows dimmer. It never could be realised, even at a time when English statute law was allowed and encouraged to descend far more deeply into detail than it can to-day. It is now further than ever from the realm of actualities and possibilities. The citizen father who was commanded to open the chapter "Of Fathers," the citizen agriculturist who was ordered to consult the chapter "Of Agriculture," would get very inadequate help from the English statute-book, but would have to grope his way through a jungle of departmental codes, regulations and instructions, all containing law which he is bound to observe. And to the intricacies of this jungle there was, until recently, no official guide. Copies of the documents embodying this class of legislation could be unearthed in the official *Gazette*, if one knew how and where to look for them. But how could the ordinary citizen be expected to make such a search? An important departure was made in 1890, since which time the statutory rules and orders of each year have been collected and published in volumes resembling the annual volumes of statutes, and those for the time being in force have been indexed periodically like the statutes. Thus some crumbs of comfort are supplied to the unfortunate citizen who cannot plead ignorance of the law as an excuse.

The case for delegated legislation is as strong as ever, and exercise of the powers given by it are specially useful where rules made under those powers are tentative, provisional, and temporary, needing more frequent amendment than can be conveniently made by the ordinary methods of parliamentary legislation. To this class belonged the emergency rules made during the war. Hence the portentous growth of delegated legislation in recent years. Mr. Carr gives some statistics illustrating this growth. Writing in 1921, he says:

Last year, while 82 Acts of Parliament were placed on the statute-book, more than ten times as many "Statutory Rules and Orders" of a public character were officially registered under the Rules Publication Act. The annual volume of public general statutes for 1920 occupied less than 600 pages; the two volumes of statutory rules and orders for the same period occupy about five times as many. The excess in mere point of bulk of delegated legislation over direct legislation has been visible for nearly thirty years.

The system of publication and indexing introduced in 1890, though sound in principle, runs some risk of breaking down in practice under the increasing burden imposed upon it, and the prohibitive cost of printing and publishing. There are some who urge that the ordinary practitioner or official has no use for nine-tenths of the annual volume or volumes supplied to him, and that what he really needs is a handy and inexpensive copy of the rules or group of rules with which he is specially concerned, separate Stationery Office publications instead of comprehensive volumes. However this may be, we should all agree that our legislative methods ought to be elastic and adaptable to the needs of the times, and the time has possibly arrived for reconsidering and revising, in the light of new experience, the regulations made and the practice adopted during the last decade of the last century. On this and on similar problems arising out of his subject Mr. Carr's little book throws abundant and instructive light. It is necessarily brief, and does not pretend to be exhaustive, for the subject matter is large and complicated. But it can be confidently recommended to those who, whether in this country, in the several parts of the British dominions, or in foreign countries, desire to know how the methods of subordinate or delegated legislation are now worked in England.

C. P. Ilbert.

THE ADDRESSES OF MR. HENRY TAFT.[1]

These collected essays and addresses of Mr. Henry W. Taft, an eminent and highly respected member of the New York Bar—English readers may be interested in knowing that he is a brother of ex-President (now Chief Justice) William H. Taft—deal with a great variety of subjects. The Introduction contains a survey of sundry controverted legal questions which have lately received much attention in the United States, and one of these, the ill-advised scheme for allowing judicial decisions to be overruled by a vote of the whole people, is also discussed in a separate paper. Several relate to the history and present position of the Bar as a profession, including the work which its members did during the Great War. Two or three are concerned with technical legal topics, and some others will have an interest for the international lawyer

[1] *Occasional Papers and Addresses of an American Lawyer*, by Henry W. Taft, of the New York Bar. (New York: The MacMillan Company, 1920).

and the student of current political questions, for they include a consideration of the Covenant of the League of Nations and to the objections taken to it in the Senate of the United States. One essay is devoted to a careful and temperate examination of Bolshevism in theory and practice, examining ideas in their relation to American political conceptions. One, brief, but written with great refinement of expression, as well as with deep feeling, commemorates a distinguished member of the American Bar, the late Mr. John Cadwallader, who had many attached friends in England, which he was wont to visit almost every year. All of the addresses are marked by strong good sense as well as professional knowledge, and will have an interest for lawyers in the Self-Governing Dominions as well as in Great Britain, for some of the matters which they touch are of practical consequence both there and here at home as well as in the United States.

BRYCE.

SALE OF GOODS IN CANADA AND SCOTLAND.[1]

THE codification of the law relating to the sale of goods by the English Act of 1893 has had an unexpected, but not an unwelcome, result. The provisions of the English Act have been adopted with or without modification by nearly all the English-speaking countries of the world. In Canada all the provinces except Quebec have now followed the lead which was given by Manitoba in 1896. The province of Ontario adopted the English Act "with slight modifications" in 1920, and Mr. Falconbridge, whose name is well known in Canada, has published an excellent little treatise based on the new Act. Apart from its intrinsic merits as a short and clear exposition of the law of sale, the handbook has several useful features. In the Ontario Act the order of the sections in the English Act has been departed from, and the definitions precede the substantive provisions. This is obviously convenient, though parliamentary exigencies prevent this plan being followed in England. In citing the Ontario sections Mr. Falconbridge refers always to the corresponding English provisions. He also cites the more important provisions of the United States Uniform Sales Act which supplement or differ from the English and Ontario Acts. That Act, though based on the English statute, has amplified many of its provisions. For example:

> There are no provisions of the Sale of Goods Act corresponding with ss. 27–40 of the Uniform Sales Act relating to negotiable documents of title. In view of the fact that the Uniform Sales Act has been adopted in New York and in twenty-two other States, the sections in question are set out below as being of some practical importance to Canadian lawyers whose clients may be engaged in transactions governed by these statutory provisions (p. 67).

[1] *Handbook of the Law of Sale of Goods*, by J D. Falconbridge, M.A., LL.B. (Canada.)

It may be noted that Ontario, in adopting the English Act, has very sensibly got rid of our anomalous rules relating to market overt, and has provided that "the law relating to market overt shall not apply to any sale of goods which takes place in Ontario" (p. 47). In citing English and Canadian decided cases the learned author is careful to give the date of each case, and to point out that cases decided before the Act must always be tested with reference to the language of the Act itself. When another edition of the handbook is published it would perhaps be convenient if the Act itself were printed as an appendix.

Mr. Aitken in a very short compass (174 pages)[1] has given us a very lucid and interesting commentary on the principles governing the law relating to the sale of goods. He writes, of course, from the Scottish point of view. Primarily his monograph is intended "for the use of business men, and students in law and in commerce in the Universities. As, however, a full citation of authorities is given, it may also be of use to the practising lawyer." Mr. Aitken is thoroughly justified in this latter statement. A Scottish lawyer has a considerable advantage over an English lawyer in dealing with principles relating to the law of sale. When the Sale of Goods Act, 1893, was extended to Scotland the Scottish rules were expressly saved in certain cases, and certain technical rules of English law were expressly excluded from application to Scotland. The consequence is that the law of that favoured country has developed on more natural lines and on principles common to all contracts which are consensual, bilateral and commutative. The Scottish lawyer is not worried by the anomalies of market overt, and the problems which arise from the revesting of the property in stolen goods, if and when the thief is prosecuted to conviction. He is not troubled with fine distinctions between a condition and a warranty "because the remedies of the buyer in both cases are the same" (p. 68). He is not weighted down by the incubus of the Statute of Frauds (reproduced in s. 4 of the Act). The brief summary of the cases which have been decided on that statute fills 120 pages of the last edition of *Benjamin on Sale.* An English decision is not binding on a Scottish Court, but, in so far as it deals with principles common to both countries, it is, of course, carefully considered. Mr. Aitken cites a good many English cases, and his impartial comments on them are useful and interesting to the English lawyer. To take a single example. The Court of Appeal has recently decided that an agreement for a "knock out" at an auction, though not a laudable, may yet be a legitimate transaction: see *Rawlings* v. *General Trading Co.* (1921), 1 K.B. 635. On this case the learned author makes the following comment:

> If two persons attending an auction agree that neither will bid against the other, it is difficult to see on what grounds the exposer can complain. But unfair means used to prejudice a sale will certainly entitle the exposer

[1] *The Principle of the Law of Sale of Goods,* by Henry Aitken, K.C. (Scotland.)

to rescind the sale, as where a party persuades the assembled company by untrue statements not to bid against him. It seems to be a question of circumstances in each case, and if it can be shown that the agreement between the bidders is for the purpose of shutting out competition and depressing the sale so as to obtain the property at a sacrifice, then apparently the sales can be set aside. It has been so held in the United States (p. 168).

M. D. CHALMERS.

TWO BOOKS ON ROMAN LAW.[1]

WHEN Professor Buckland writes in his preface that his big volume of scholarship is intended for the use of students, his words are, surely, rather a prophecy of a wiser future than a probability for to-day. When the normal student of law in this country has tuned his mind to making such a volume one of his textbooks then England will no longer be open to the reproach that its universities and its practising lawyers have thought too much of law as a profession, and too little of law as a science. Professor Buckland, as much as any living man, has helped in wiping out that reproach. It is not a mere matter of scholastic sentiment that English students should be encouraged to grasp the principles of Roman law, although (unlike the law students of the Continent of Europe) they may never have to use it in practice, in any very direct way. For Roman law is the most elaborate code the world has seen. It deals with the essential principles at the root of all legal practice; and, seen as a complete historical unit, the laws of Rome have an educative quality that no other system seems to possess. Professor Buckland in this present book is, however, not immediately concerned with either the history or the science of law. His object is to write a most precise and carefully documented account of the Roman law as it stood during the whole period of the Empire—if indeed any word expressing stability can legitimately be employed to describe the condition of law over such a long period as five and a half centuries. In choosing the time of the first Emperor as his beginning, Professor Buckland has sought the most logical dividing line that can be found during the long evolution of this great system of law. He has begun at the moment when Roman legal rules ceased to be the expression of the general customs of that race, and became, instead, the consciously decreed laws of a formal legislative person or assembly. Of course, all lines in history are based on more

[1] *A Textbook of Roman Law from Augustus to Justinian*, by W. W. Buckland, M.A., F.B.A., of the Inner Temple Barrister-at-Law, Regius Professor of Civil Law in the University of Cambridge. (University Press, Cambridge, 1921), pp. ix + 756).

Droit Romain : aperçu historique sommaire ad usum cupidæ legum iuventutis, Georges Cornil, Professeur à l'Université de Bruxelles, membre de l'Académie royale de Belgique. (Bruxelles, 1921, Imprimerie médicale et scientifique, 34 rue Botanique, pp. x + 746.)

or less rash generalisations and compromises of thought; and, as we shall see below, M. Cornil has fixed on another date with much the same classification in his mind. But it would be difficult to choose between them on this point. Professor Buckland has the faculty of making the reader regard this old law as a legal practitioner would consider it if it were a living reality, with an argument before a judge as his end in view; and the long list of authorities at the foot of each page gives the student the comforting illusion that he is on the more familiar ground of the English cases. Although he is mainly interested in Roman law as an accomplished fact, of course Professor Buckland's pages are packed with history; for, although the later Roman legislators flattered themselves that they were "creating" law, they were, after all, only developing the older customary basis. There is a short historical introduction which makes one hope that this scholar will soon give us a more definitely historical survey. There are many signs that it will be a valuable book. For example, in mentioning the *Comitia Curiata* there is the illuminating comment: "It is doubtful whether this body ever exercised legislative power in the ordinary sense. Important as its functions were, they belong, in the main and apart from formalities, to an age before legislation was thought of as an ordinary method of law reform." That goes to the whole root of the history of legislation. One might regret, in passing, that on the matter of the *Comitia Centuriata* neither Professor Buckland nor M. Cornil has considered whether the use of a word denoting a numerical hundred does not give us a clue to the origin of that assembly as a political body. In the form in which this assembly appears, it is clear that the whole essence of its political use precludes the idea that there were a hundred members in each division; and it is equally impossible to believe that such a word could have been originally chosen to describe a new organisation which had nothing to do with a hundred as its unit. It therefore seems to follow that the political organiser (Servius Tullius, or whoever it was) must have taken over an existing social organ used for some other purpose, in which the term "hundred" had once possessed a natural meaning. Perhaps the political *Comitia Centuriata* had gone through a long evolution—as the military century progressed until it no longer was a body of a hundred men. The point is worth clearing up, for the name must have often worried the young student of law in his first pages.

M. Cornil has written a very different kind of book. He is not concerned so much with the law as it was at any particular moment, but rather with the question of what it grew from, and how and why it so grew. His book is a most brilliant treatise on the social and economic bases of all law. It should come before Professor Buckland's work in a properly arranged educational course, for it deals with those social facts that underlie all law in every country. M. Cornil handles Roman law, but he is really giving us the groundwork of law as a department of sociology. He is continually seeking to discover those elementary

principles of human relationship of which the law is only the formal expression. It is impossible to recommend a more valuable book as a foundation not only for a legal, but also for an historical and economic course of study. It will make all further study infinitely easier, because it continually gives some simple natural fact as the basis of what grows into an apparently very complicated legal rule. It is impossible to give a detailed account of the vastness of knowledge that can be gathered from M. Cornil's work; for the scope of his subject is immense. There is no other department of human action and thought which has been so carefully examined over such a long period as that covered by the history of Roman law. We have in it a survey of at least thirteen centuries. That is why it is so all-important to the student; here he can trace human institutions in the making, and human relationships are the basis of law. M. Cornil says: "La science du droit s'attache à surprendre, dans les mouvements de la vie sociale, le rapport du facteur de règlementation juridique avec tous les autres facteurs organiques de la vie sociale." His passage on the distinction between custom and law is typical of his aim and his method: "La source des règles de droit se trouve à vrai dire dans la vie sociale elle-même: l'évolution du droit soit pas à pas la transformation des conditions de la vie sociale. Cependant comme l'ordre social implique que les règles du droit soient exprimées par certains organes sociaux, l'habitude s'est formée d'attribuer, à ces organes enregistreurs des normes juridiques, un rôle proprement créature, et de considérer ces organes sociaux comme des sources du droit, alors qu'en réalité ils se bornent à formuler plus au moins habilement les règles de droit que leur imposent les conditions muables de la vie sociale." There we have concisely stated one of the most fundamental facts of history and of all sociology. M. Cornil writes as being always conscious of this social fact beneath the law, even when it is the decree of an apparently absolute Emperor. The serious student will err if he imagines that he can more easily learn from a shorter book on this long subject of Roman law. A few pages of M. Cornil will convince him that the longest way round is the shortest way home in this case, for this book is a model of clarity—and he can also have the added satisfaction of using a textbook which will tell the most mature lawyers and historians a very great deal that they do not know. M. Cornil divides his book into three parts. The first contains the law when it was *droit national*—that is, the *ius quiritium* of the city of Rome. The second starts when the Romans began their foreign conquests, about B.C. 350, and ends about the year A.D. 300, during which time Rome became an Empire, and its law "un droit élaboré méthodiquement par les fonctionnaires; un droit doctrinal se substitue au droit populaire" (it would be possible to write a book on that great generalisation—which, unlike most great historical generalisations, is also true). The third period of the Low Empire extends from A.D. 300 to the death of Justinian A.D. 565, when "le développement scientifique du droit romain est arrêté

il n'y a plus que de purs practiciens et des compilateurs "—a sentence which perhaps needs a good deal in the way of qualification. An appendix of twelve pages sketches the life of Roman law from Justinian to our modern days. It must be repeated that this whole book is a masterly statement of a great subject which lies at the root of the civilisation of the greater part of Europe. A book which is sufficiently detailed and precise for the student reading for an examination in Roman law is also an invaluable introduction to the chief principles of social evolution. If English people will not read it in the original French, it should be translated with all speed; for there is no other book which can quite take its place.

G. R. Stirling Taylor.

POLITICAL SCIENCE AND THE ENGLISH CONSTITUTION.

The perusal of a large number of books upon Political Science is apt to promote the opinion that the subject has no real claim to such a title. The reason is not far to seek. Since the time of Aristotle all the great works on political theory have been in the nature of pamphlets, written with a definite practical object in mind. The writers may have enunciated first principles according to their lights, they may have reasoned profoundly, but their outlook was practical, not scientific. Mr. Gilchrist [1] argues valiantly for the term "political science" as against "political theory" or "politics," but the more closely details are considered the less valid does the claim appear. In truth the essential condition precedent of any scientific study of politics is a thorough restudy of the facts and a thorough revision of the terminology. Words and categories have come down to us from the past that once possessed great historical and practical importance, but are now mere incumbrances that darken counsel. Two such words that could be abolished, or at least reduced to their proper historical position, are "state" and "sovereignty." Both are products of the Renascence, and both served useful and definite purposes in their time, but their true significance and usefulness have now become buried under a monstrous mass of metaphysical subtlety. Metaphysics is completely out of place in the detailed discussion of a concrete science.

Mr. Gilchrist provides quite a good instance of the deplorable effects of this tyranny. He writes (p. 121) as follows:

> The modern theory of sovereignty arose with the modern national democratic state. In the Middle Ages there was really no state in the modern sense. Feudalism had to break up before the modern idea of a state could emerge.

[1] *Principles of Political Science.* By R. N. Gilchrist, M.A. (Longmans, Green & Co., Bombay and London, 1921.) Cr. 8vo, xi and 799 and li pp. 16s. net.

Leaving out the words "national" and "democratic," this is a perfectly fair statement. Then the author puts aside straightforward historical exposition and becomes engulfed in metaphysics, with this result (p. 158):

> The individual has no rights against the state. To have rights against the state is tantamount to saying that the individual has no rights at all. If there is no state there are no rights, but only powers. The state is essential to the existence of rights among mankind.

Putting the two passages together, we arrive at the remarkable conclusion that no rights existed at all during the Middle Ages. What would Bracton or Bartolus have thought of such a statement? They would hardly have been convinced of the superiority of modern science to their philosophy.

Let us hasten to add that in objecting to the current methods of studying politics we intend no injustice to Mr. Gilchrist. Within the trammels of a traditional method he has produced a clear and vigorous exposition of all the general heads of the subject. The book is intended primarily for Indian students, but there is no reason why it should not be equally valuable elsewhere.

It requires some courage to add another volume to the huge mass of literature on the English Constitution, but Mr. Masterman need make no apologies.[1]

He writes from first-hand observation, his style is extremely interesting, and, perhaps it is not superfluous to add, characterised by a cheery optimism. The book contains no new theories, but as a plain elementary account of the institutions of England in actual practice it is as good as anything at present in print. Some errors in detail can easily be corrected in subsequent editions, but beyond that we would only remark that a closer consideration of Pollard's *Evolution of Parliament* might lead to the improvement of certain paragraphs, and that in some directions there is rather too much criticism for a work that professes to be only expository.

The plan of the book is quite original. After an introductory chapter describing a child coming into contact with law, the remainder of the first part is taken up with an account of the machinery of elections. The second part, occupying nearly half the entire volume, is devoted to Local Government, designated, not too happily, the government of the city. A short book follows on the legal system, under the two headings of ow and High Justice—a foreign distinction that is alien to English law. Finally about 80 pages out of 265 are devoted to Parliament and the Central Government. This will demonstrate the unusual arrangement of the book, which has the incidental advantage that it can be used as a supplement to any of the other current manuals.

H. J. R.

[1] *How England is Governed.* By Right Hon. C. F. G. Masterman. (Selwyn & Blount, Ltd., London, 1921.) Cr. 8vo, xii and 265 pp. 7*s.* 6*d.* net.

A HISTORY OF THE PEACE CONFERENCE OF PARIS.

In a notice of the first volume of *A History of the Peace Conference of Paris*,[1] was pointed out the difficulty of presenting as history what was hardly yet past politics, and of appraising diplomacy, when, admittedly, there are things of consequence that are still either unknown or incalculable ; and we felt, further, that in an undertaking so vast as that on which the editor had embarked it was not possible for him to avoid inconsistencies and contradictions on the part of his contributors, and for them and him to avoid being inconclusive on one matter and perhaps too confident on another matter. In a foreword to the fourth volume the editor presents an apology. He " has sought to steer a course equally remote from official apologetics and unofficial jeremiads." He recognises that some of the arcana of the Conference may never be really known. For example, while the methods and decisions of the Commissions were " relatively known and exact, more reducible to a formula, and therefore far more intelligible than were the decisions of the ' Four ' or of the ' Ten,' " it is not always possible to state why " results " were altered, for the explanation is in some cases not known, or, again, " the real explanation . . . cannot always be revealed."

The scale on which this work has been planned may be judged from the fact that the whole of the second volume is devoted to the settlement with Germany. The third volume is made up of (1) a Chronological Table (pp. 1–9) for the years 1914–18, (2) a Chronological Summary (p. 10–41) of the Peace Conference, and (3) Documents—principally the German Treaties with Russia and Rumania, League of Nations Documents, the Treaty between the Allied and Associated Powers and Germany, and the text of the new German Constitution. The fourth and fifth volumes have as their subject-matter the reconstruction or the founding of States upon the ruins of the old Austria-Hungary. A sixth volume remains to be published.

The outstanding marks of this *History* are the diligence that has gone to its making, and the comprehensive and varied nature of its contents. The mere summary just given should suggest these conclusions. One or two illustrations will suffice to confirm them. We welcome a number of historical retrospects and appreciations, *e.g.* on Alsace-Lorraine, and on the expansion of Europe and the German colonial movement, in the second volume; on the Teschen question in the fourth volume; and on the protection of minorities in the fifth. These surveys are sparse, and we again express regret that the historical background has been interpreted in so slender and niggard fashion in the planning of this work. The historical facts may seem to be, in some cases, not very illuminating, as they are said to be with reference to the question of the northern frontier of Italy. But, where they do not present a positive contribution to the

[1] Volumes ii to v. Edited by H. W. V. Temperley. (Henry Frowde and Hodder & Stoughton.)

settlement or an arrangement made, they do usually present at least a negative lesson, not wholly barren of results, in brushing aside baseless and irrelevant claims and contentions. Still, we welcome the little that is proffered by way of what may appear to some of the contributors to be pre-history—history before this *History* takes beginning and title.

As an example of the directly useful character of the contents of these volumes, we would point, apart from texts and documents, to the twenty maps given in them: they have the merits of pertinence, adequacy, and clearness. On the inviting but exacting subject of the relation of political principles to facts and results, we welcome, in the second volume, the sensible exposition of the causes—the three main ideas born of experience from which issued the three "practical causes"—of a desire for a League of Nations. We cannot accept the statement there given as adequate for the genesis of the principles that moved the reputed father of the League, but a protest is rightly uttered against the excessive claim that has been advanced for the influence of the constitution of the United States upon the terms of the Covenant. The relation of principles to facts is well illustrated in a chapter by the editor in the fourth volume—considerations on the principles underlying the treaties with Austria, Bulgaria, and Hungary. Not without reason attention is drawn, in a footnote, to the limitation prescribed by Mr. Wilson himself to the application of the principle of self-determination:

> That all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break up the peace of Europe, and consequently of the world.

It is intended to point out in the concluding volume the lessons of the Conference. In the meantime it may be said that this work is of very high value for the student of international affairs, and will be indispensable for the historian.

D. P. H.

WAR AND TREATY LEGISLATION.

It is the fashion of to-day to disparage the Treaty of Versailles. But, though events have damaged its prestige, readers of its text must surely admire the skill of those who gave form to its clauses. Alternating periods of bustle and delay, constant revisions and confusion of languages, were no doubt responsible for not a few blunders; and many critics dilate upon them. "Formal indication of insolvency," they say, truly, is a phrase strange to English law; yet, according to the Treaty, it is to bear the same meaning as in English law. The phrase, therefore, as Mr. Paul F. Simonson points out in his recent book, *Private Property and Rights in Enemy Countries*,[1] is probably an incompetent retranslation of a French

[1] Effingham Wilson and Sweet and Maxwell, London, 1921.

translation of some words in the Bankruptcy Act, 1914. Again, sub-clause (f) of Article 297 is a departure from the scheme of the private property clauses which only the circumstances of its origin could justify. Mr. Simonson is led by reflections such as these to suggest that these clauses were originally drafted in French and then suffered at the hands of an unskilled translator. This may be so ; but diplomatic processes are seldom so simple, and he is a confident critic who dares to analyse the proceedings of an international committee of experts. Treaties are generally patch-work, threads drawn from a hundred plans and projects, worked and reworked in the search for compromise. The marvel seems, therefore, to be that the legal provisions of the Treaty of Versailles break down so rarely. For they are complex—so complex that many have vainly thought to simplify them. Mr. Simonson has set himself to this task in the earlier pages of his book, but readers must judge for themselves whether the Treaty itself is more complex than the analysis. Perhaps these chapters would have run more smoothly if the writer had not fallen victim to yet another temptation. The private property clauses in the three other ratified treaties are so like the German clauses that it seems natural to deal with them all together. Yet perhaps this too is a delusion, and one pair of eyes at least have tired of the monotonous refrain of "Germany [Austria, Bulgaria, Hungary]." On the other hand, Mr. Simonson's plan of printing the relevant passages of the subsidiary treaties on the pages opposite to the German text in his commentary is excellent. The commentary is certainly the best part of the book. The writer has not been daunted by the absence of authority on most of the doubtful points, nor by the outpouring of decisions in many countries while his work was in progress. He has examined the text of the treaty with obvious care, and by his research has made discoveries of value. Some of them, however, would not puzzle an international lawyer so much as they seem to have puzzled Mr. Simonson. In truth, this book does not arrest attention as one destined to be a standard work ; but the author can justly claim to be a not unsuccessful pioneer in fields where many will labour hereafter.

Mr. Scobell Armstrong has also written a book on the Treaties.[1] It is, as its title proclaims it, mainly a collection of documents. Unlike Mr. Simonson's book, it travels back into the older story of war legislation ; but, like Mr. Simonson's book, it has introductory chapters—one of them on the private property clauses in the treaties of peace—and so challenges comparison with it. Mr. Armstrong's chapters are short, sketching each subject in the barest outline, and if, as undoubtedly they are, they are clear and readable, they owe much of their simplicity to the omission of those details which are essential to a full survey of the subject. Nevertheless, these attractive summaries, scattered about this book of reference, are tantalising. For they suggest that Mr. Armstrong might have written a book of greater value. As it is, his pages are rich in information.

[1] *War and Treaty Legislation*, Hutchinson & Co., London, 1921.

He outlines, for example, the German trading-with-the-enemy legislation. Before the war, he tells us, trading with the enemy was not directly prohibited in Germany; but on September 30, 1914, the German Government, by way of reprisal, issued a decree prohibiting all payments to Great Britain. This Decree was afterwards extended to other enemy countries, and a later Decree of December 16, 1916, authorised the cancellation of contracts with enemies. The first interference with British businesses in Germany was through the State supervision provided for by a Decree of September 4, 1914. The supervisor could veto any act or dealings by enemy-controlled firms, but he was not entitled to intervene in the management. Soon, however, in December 1914, new Decrees authorised the compulsory administration of such undertakings, though, remarks Mr. Armstrong, "the administration of enemy businesses was, as a rule, conducted with a careful eye to their conservation." But in 1916 Germany, in reprisal for the British Trading with the Enemy Amendment Act, went further, and authorised the Chancellor to order the complete liquidation of British-controlled undertakings, and finally, in April 1917, a Custodian of Enemy Property was appointed. This step had been taken in Great Britain more than two and a half years before; but in other respects it appears from Mr. Armstrong's summary that Germany quickly followed Great Britain's lead. That Germany should have followed, and not led, was due partly perhaps to the more lenient legal doctrine prevailing there before the war, but mainly no doubt to the German conception of what was most beneficial to Germany.

Mr. Armstrong has succeeded completely in a comparatively easy task. Perhaps he was wise not to attempt a more ambitious enterprise. While so few points have as yet been authoritatively determined, and so many new decisions are becoming available from month to month, practitioners could not safely rely on any commentary, however excellent. No legal historian is yet in a position to make a comparative study of war legislation. The story of the Treaty legislation will be lost or locked up in the Foreign Offices for a generation. It may be long, therefore, before the standard work can be written.

R. F. Roxburgh.

JOURNAL

OF

COMPARATIVE LEGISLATION

AND

INTERNATIONAL LAW.

EDITED FOR

THE SOCIETY OF COMPARATIVE LEGISLATION

BY

SIR LYNDEN MACASSEY, K.B.E., K.C., LL.D.

AND

C. E. A. BEDWELL, Esq.

Let observation, with extensive view,
Survey mankind from China to Peru.
SAMUEL JOHNSON.

THIRD SERIES. VOL. IV., PART II

LONDON:
SOCIETY OF COMPARATIVE LEGISLATION
1, ELM COURT, TEMPLE, E.C.4
1922.

[*All rights reserved.*]

All communications to be addressed to
C. E. A. BEDWELL, ESQ., *Hon. Secretary*, 1, *Elm Court, Temple, E.C.*4.
The annual subscription to the Society is one guinea.

Printed in Great Britain by Hazell, Watson & Viney, Ld.,
London and Aylesbury.

TABLE OF CONTENTS.

PAGE

BRITISH EMPIRE :—

I. BRITISH ISLES—

1. United Kingdom. *Contributed by* Cecil T. Carr, Esq., LL.D. 1
2. Isle of Man. *Contributed by* Llewellyn Kneale, Esq. . . 16
3. Jersey. *Contributed by* E. T. Nicolle, Vicomte of Jersey . 18

II. NORTH AMERICA—

1. Dominion of Canada 19
2. Alberta.
   Contributed by John D. Hunt, Esq., K.C., Clerk to the Executive Council 19
3. British Columbia.
   Contributed by H. G. Garrett, Esq., Registrar of Joint Stock Companies 25
4. Manitoba. *Contributed by* J. Pitblado, Esq., K.C., LL.B. . 30
5. New Brunswick. *Contributed by* The Hon. the Attorney-General. 32
6. Ontario.
   Contributed by John Delatre Falconbridge, Esq., K.C. 34
7. Prince Edward Island.
   Contributed by W. E. Bentley, Esq., K.C. . . . 38
8. Quebec.
   Contributed by the Hon. Mr. Justice Fabre Surveyer . 38
9. Saskatchewan. *Contributed by* R. W. Shannon, Esq., K.C. . 41
10. Newfoundland. *Contributed by* The Hon. the Minister of Justice 44
11. Bermuda.
   Contributed by Sir Reginald Gray, K.C., Speaker of the House of Assembly 48

III. AUSTRALASIA—

1. Commonwealth of Australia.
   Contributed by Sir Robert Garran, K.C.M.G.. . . 49
2. New South Wales. 56
3. Queensland.
   Contributed by the Hon. Littleton E. Groom, M.A., LL.M., and J. F. Gamble, Esq., B.A., LL.B. . . . 56

PAGE

4. South Australia.
Contributed by A. J. Hannan, Esq., M.A., LL.B., Parliamentary Draftsman, South Australia . . . 58
5. Tasmania. *Contributed by* H. S. Baker, Esq., LL.M. . . 71
6. Victoria.
Contributed by His Honour Judge Zichy-Woinarski, K.C., and W. Harrison Moore, Esq., C.M.G. . . . 78
7. Western Australia. *Contributed by* F. L. Stow, Esq., LL.D. 89
8. Papua. *Contributed by the* Hon. Mr. Justice Herbert . . 96
9. New Zealand.
Contributed by J. Christie, Esq., LL.M., Parliamentary Law Draftsman 97
10. Fiji. 109
11. British Solomon Islands Protectorate 109
12. Gilbert and Ellice Islands Colony.
Contributed by His Honour A. K. Young, K.C. . . 110

IV. SOUTH AFRICA—

1. Union of South Africa.
Contributed by E. L. Matthews, Esq., K.C., C.M.G. . . 110
2. Cape of Good Hope. 120
3. Transvaal. *Contributed by* G. Hartog, Esq. . . . 120

BRITISH EMPIRE.

I. BRITISH ISLES.

1. UNITED KINGDOM.

[*Contributed by* Cecil T. Carr, Esq., LL.D.]

During the Parliamentary Session of 1920 the Government, even after the representatives of organized labour had parted from the Coalition, still commanded an overwhelming majority. But, though Parliament sat till Christmas, and though 82 Public General Acts were passed, many measures foreshadowed in the King's Speech had to be left for another session or another Government. The abandonment of proposals relating to licensing, electrical power, a minimum wage, the fishing industry, the State acquisition of coal royalties, and the reform of the Second Chamber indicated that either time was too short or circumstance too strong for great schemes of reconstruction. Pleas were heard that the programmes of subsequent sessions should be less exacting. Many important Acts were passed, but the machine was working at too high pressure for the improvement of the statute-book. The moment was unpropitious for progress with statute law revision. The sole measure of consolidation was the Rent Restriction Act, which, though intended to be temporary, has built itself an enduring monument in the law reports.

The motives for legislation in 1920 were various. The storm was over. The ship was still afloat, but not yet in harbour. Her hull was protected and her deck-space encumbered by strange structures which the carpenters, though not proud of their handiwork, were yet loth to jettison. These hasty improvisations required inspection to see whether they could be safely removed or whether they must be renewed or replaced by something more lasting. The Irish situation called not only for permanent political settlement, but also for the temporary suppression of crime and disorder. The mining industry was agitated by questions of prices, profits, wages, and State control. Elsewhere legislation was required to keep pace with high prices, to appease the public resentment at profiteering, and to deal with the menace of unemployment. These were grave additions to a legislative year wherein Parliament might otherwise have resumed the normal activities suspended for the duration of the war.

Legally the war still endured. The Armistice had been signed in November 1918. Ten days later Parliament had enacted that the war should not be officially ended until such date as His Majesty might by Order in Council determine. The treaties of peace with Germany, Austria, and Bulgaria, concluded during 1919, were not ratified till 1920. The similar treaties with Hungary and Turkey were not even signed till

the summer of the latter year. The date eventually fixed as the termination of the war was August 31, 1921. Meanwhile, in 1920 there were more than sixty Acts of the war period (not to mention other legislation such as the Defence of the Realm Regulations) which would expire upon that as yet undetermined date or at a specified time thereafter. To struggle back from the exceptional and temporary to the normal and permanent, that was the problem. The legislative effort of 1920 is inspired by the natural reaction against war restrictions, the administrative difficulty of cancelling those restrictions with a stroke of the pen in the face of serious domestic uncertainties, and the recognition of the fact that even the much-abused D.R. Regulations had contained elements worth perpetuating in statutory form.

War Laws Continuance.—Not only were certain D.R. Regulations temporarily prolonged in modified form—as is to be seen, for example, in the second schedule to the War Emergency Laws (Continuance) Act, in the Shops (Early Closing) Act, and in the Ministry of Food (Continuance) Act. In addition the Firearms Act, the Dangerous Drugs Act, and the Official Secrets Act made permanent certain features which the country had first encountered in the guise of D.R. Regulations 30, 40B, 41, and 45. The life of "Dora" (as the war-time Defence of the Realm Act was familiarly named) being thus prolonged by artificial respiration, there came a moment when, the country being in doubt whether she was alive or dead, something like her ghost passed twice through the Houses of Parliament. In other words, the device of giving the executive an almost unlimited power of making regulations in emergency was twice repeated in 1920.

Emergency Acts.—In October, when the long-threatened strike of miners had begun, both Mr. Bonar Law and Mr. Lloyd George admitted a doubt about the D.R. Regulations.[1] The admission was made on the introduction of a drastic Emergency Powers Bill, which was passed in four days, "to make exceptional provision for the protection of the community." S. 1 (1) of this Act (c. 55 of 1920), which is permanent legislation, though not intended to operate except at a crisis, ran as follows:

> If at any time it appears to His Majesty that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life, His Majesty may, by proclamation (hereinafter referred to as a proclamation of emergency) declare that a state of emergency exists.

When such a proclamation has been issued, Parliament must be informed forthwith, and, if not sitting, summoned. While the proclamation is in force, there is power by Order in Council to make regulations for securing the essentials of life to the community. The regulations may provide for trial by courts of summary jurisdiction of persons guilty of offences against the regulations, "provided that no such regulations shall alter any existing procedure in criminal cases or confer any right to punish by fine or imprisonment without trial."

[1] These Regulations took effect till the end of the war. On March 31, 1920, Parliament continued some of them in a qualified form till the following August 31. Had it been intended that in September (when the war was after all not yet ended) they should revert to their unqualified operation?

In introducing the Bill, Mr. Bonar Law said it had been drafted for some months. The Government disclaimed any connection between its proposals and current industrial disturbances. In a keen debate certain amendments were accepted. The Home Secretary consented to limit the duration of a proclamation to one month (without prejudice to the issue of a fresh proclamation at the end of that period) and to add a proviso that the regulations should not make striking or "peaceful persuasion" an offence and should not impose any form of military or industrial conscription.

Parliament retained an unusual degree of control over these regulations, for they were to have no effect after seven days unless both Houses passed a resolution for their continuance. The importance of this check is visible if we compare the episode of the railway strike in 1919 with that of the coal stoppage of 1921. In 1919 the situation was met by action under the Defence of the Realm Regulations; Parliament was not sitting and was not specially summoned. In 1921 the situation was met by proclaiming a state of emergency on March 31. Parliament was sitting, but would have been summoned had it been separated. The proclamation was continued monthly till July, by which time the crisis was over. Regulations, issued on April 1, were approved (with minor modifications) by resolution of Parliament after debates on April 5 and 6; they were reissued on April 30 and again on May 27, being debated in each case a few days later on the resolution for their approval. It is hard to see by what better legislative mechanism such situations can be met if we are to preserve a form of Government which, in Lincoln's words, is strong enough to maintain its existence in great emergencies, yet not too strong for the liberties of its people.

R.O.I.A.—The Emergency Powers Act did not apply to Ireland, for which country it had been necessary to pass a not dissimilar measure in August. The Restoration of Order in Ireland Act (c. 31) explains itself:

> Where it appears to His Majesty in Council that, owing to the existence of a state of disorder in Ireland, the ordinary law is inadequate for the prevention and punishment of crime or the maintenance of order, His Majesty in Council may issue regulations under the Defence of the Realm Consolidation Act, 1914 . . . for securing the restoration and maintenance of order in Ireland, and as to the powers and duties for that purpose of the Lord-Lieutenant and the Chief Secretary, and of members of His Majesty's forces and other persons acting on His Majesty's behalf, and in particular regulations for the special purposes hereinafter mentioned. . . .

Those special purposes included the constitution of special Courts, and provisions that courts martial might have the powers of justices for binding persons over to keep the peace, enforcing recognizances and compelling witnesses to give evidence and produce documents, that persons sentenced to imprisonment in Ireland might be detained in prisons anywhere in the United Kingdom, that courts of inquiry under the Army Act might perform the duties of coroners and coroners' juries, that High Court or County Court trials in Ireland might take place without juries, and that, if local authorities defaulted in paying compensation for criminal injuries or otherwise, the sums payable to them from public funds might be intercepted and appropriated.

Like those made under the Emergency Powers Act, the R.O.I.A. regulations were to be laid before Parliament as soon as made; but,

unlike the former, they required no positive resolution of approval, but were merely subject to annulment on an address to His Majesty by either House within 14 days. Some three-quarters of the code of regulations ultimately issued consisted of D.R. Regulations as modified and applied to Ireland ; the remainder were devoted to the special purposes outlined above.

Transitional.—Two other Acts were necessary to the process of winding up war concerns and liabilities. One incident of the measures taken for the defence of the realm was the acquisition of land. Some of this land had, before it was thus acquired, been subject to restrictive covenants. The Defence of the Realm (Acquisition of Land) Act (c. 79) allowed the Government to dispose of this land free from such covenants. It also provided for resale, etc., and abolished the pre-emptive right of an adjoining landowner to have the first refusal of the site.

Precedents for a Bill of Indemnity at the close of an exceptional period are not wanting. The Indemnity Act of 1920 (c. 48) gave the usual protection against legal proceedings, civil or criminal, for—

> Any act, matter, or thing done, whether within or without His Majesty's Dominions, during the war before the passing of this Act, if done in good faith, and done or purported to be done in the execution of his duty or for the defence of the realm or the public safety, or for the enforcement of discipline, or otherwise in the public interest, by a person holding office under or employed in the service of the Crown in any capacity.

There were savings to this clause, and there was a right to compensation for acts done under the prerogative or other powers, assessment to be made before a War Compensation Court presided over by a judge of the High Court in England or the Court of Session in Scotland.

The war sentences of military courts or courts in occupied territories were " deemed to be and always to have been valid and within the jurisdiction of the court." Laws and ordinances made in administering such territories were similarly confirmed. Retrospective validity was also given to the customs proclamations and Orders in Council affected by Mr. Justice Sankey's adverse judgment in *Att.-Gen.* v. *Brown* ([1920] 1 K.B. 773).

The Mining Industry.—The anxieties of the mining industry may fairly be grouped among the *sequelæ* of the war. The Coal Mines (Emergency) Act (c. 4) continued the system of aggregating and pooling profits, the sum for distribution being guaranteed by the State to be at least nine-tenths of the pre-war standard. Wages under the Sankey award were treated as a working expense. The pithead-workers' extra pay was prolonged. The Act, passed at the end of March, was a temporary arrangement, as the coal control agreement was to lapse at the end of August.

The Mining Industry Act (c. 50), passed during August, was meant for permanence. It established a Mines Department of the Board of Trade with a Secretary at £1,500 a year who, but for an amendment by the House of Lords, would have been a Minister at £2,000. Advisory committees were established. Power was given (for a year only) to regulate export and supply of coal for bunkering as well as pithead price. Mine-owners were ordered to pay a penny a ton annually into a fund to be applied to " purposes connected with the social well-being, recreation and conditions of living of workers in or about coal mines and with mining education and research."

Part II of this Act provided for the setting up (under Board of Trade Regulations) of pit committees, district committees, area boards, and a National Board. The pit committees (who were to have fees for attendance at the mine-owners' expense) could discuss and make recommendations of safety, health and welfare, maintenance and increase of output, disputes (including wages disputes), and other matters. These considerations could be referred upwards and discussed by district and area bodies. The scheme obviously depended on co-operation, and here it failed. S. 17 of the Act provided an unusual feature:

> If at the expiration of one year from the passing of this Act it appears to the Board of Trade that the scheme of this Part of the Act has been rendered abortive by reason of the failure on the part of those entitled to appoint representatives as members of the pit and district committees, area boards, and the National Board to avail themselves of such right, the Board of Trade shall issue a report of the circumstances, and that report shall be laid before Parliament, and at the expiration of thirty days during the session of Parliament from the date when it is so laid all the provisions of this Part of this Act shall cease to have effect unless in the meantime a resolution to the contrary is passed by both Houses of Parliament.

At first the miners declined to operate this part of the Act. Later the miners were willing, but the mine-owners were not. The Board of Trade, after tentatively issuing its regulations, had to report on February 7, 1922, that the scheme had been rendered abortive. A resolution that Part II of the Act should not cease to have effect was moved from the Labour benches on March 7 but was negatived next day; and thus this enactment expired.

High Prices.—The Profiteering Act of 1919 was amended and enlarged in 1920 (c. 13). Trades were encouraged to submit voluntary schemes for limiting profits. If the Board of Trade considered that such schemes secured an adequate supply for the home market, producers complying therewith could by order be exempted from any general investigation under the Act. The 1919 statute was extended to hire-purchase transactions, and might by Board of Trade order be extended to "any process of manufacture, or the repairing, altering, dyeing, cleaning, washing, or otherwise treating of any article mentioned in the order," or even (after consultation with the Ministry of Transport) to any form of road transport. Books and documents were to be produced on official demand; unreasonable refusal or wilful neglect to comply was made an offence as also was the improper publication of confidential information. There was a general protection against the disclosure of secret processes. To prevent victimization there was a penalty against a person complained of if he unreasonably refused to sell to a complainant any article exposed for sale. The Profiteering Acts expired in 1921.

Profiteering in house accommodation was combated by a consolidating and amending Increase of Rent and Mortgage Interest (Restrictions) Act (c. 17), which covered houses of a rental up to £105 in London, £90 in Scotland, and £78 elsewhere. This Act, limited in duration to June 24, 1923, shows the cumulative complications consequent on interference between landlord and tenant. It recognized a "standard" (*i.e.* pre-war) rent; on request in writing landlords must furnish a statement of the standard rent. A landlord was permitted to make certain increases of rent, subject in part to their suspension by the County Court, "on the ground that the house is not in all respects reasonably fit for human

habitation or is otherwise not in a reasonable state of repair." A limited increase in the rate of mortgage interest was also permitted. The calling-in of mortgages was restricted; so was the landlord's right to recover possession or to eject a tenant. Distraining for rent was forbidden except with leave of the County Court. It was made an offence to ask for a premium as a condition of granting, renewing, or continuing a tenancy within the Act. Profiteering in furnished houses was also attacked; if the rent was more than 25 per cent. over the "normal profit" (*i.e.* the profit reasonably expected from a similar letting in pre-war days), the County Court could declare the excess to be irrecoverable: if the profit was one which, "having regard to all the circumstances of the case . . . is extortionate," a Court of summary jurisdiction could impose a fine. The Act was to apply for a short time to business premises. It did not apply to accommodation *bona fide* let at a rent including board, attendance, or use of furniture, save as otherwise expressly provided. The burden of working the Act falls largely on the County Courts; such problems as "reasonably equivalent alternative accommodation" naturally leave much to judicial discretion.

Increase of Charges.—Two temporary Increase of Charges Acts, one for tramways (c. 14), the other for ports, harbours, docks, and piers (c. 21), allowed statutory maximum charges to be raised by order of the Ministry of Transport assisted by advisory committees. The Gas Regulation Act, which is discussed on a subsequent page, authorized increased charges by gas companies.

The maximum payment which County Councils in England and Wales can contribute to the County Councils Association was raised from £31. 10*s.* to £42 (c. 19).

As for postal charges, the statutory limits for inland postcards and printed packets were repealed by the Post Office and Telegraph Act (c. 40). The maximum rate for a twelve-word telegram was brought up to a shilling, with power to charge 6*d.* extra for telegrams on Christmas Day, Good Friday, or Sunday. Important Inland Post Amendment Warrants under the Post Office Acts increased the postage on letters, printed packets, and newspapers, the letter rate rising to 2*d.* for the first three ounces.

Other legislation which optimists might classify as transitional—war taxation, increase of pensions, unemployment relief, and so on—will be found in some of the following Acts which otherwise more nearly represent the normal output of a legislative year.

Foreign Relations.—The Treaties of Peace (Austria and Bulgaria) Act (c. 6) was modelled on the similar Act of 1919 as to Germany. His Majesty might make such appointments, establish such offices, and make such Orders in Council as might appear necessary for carrying out the Treaties and giving effect to their provisions. In their brevity these Peace Treaty Acts are in contrast to the successive Orders in Council and the Mixed Arbitral Tribunal rules of procedure to which they give rise.

International Labour Conventions, such as Sir Lynden Macassey has recently described in this *Journal*, and Conventions as to air navigation and opium, led to domestic legislation to be mentioned later.

Imperial Arrangements.—The Nauru Island Agreement Act (c. 27) confirmed an arrangement between H.M. Government in London, H.M. Government of the Commonwealth of Australia, and H.M. Government

of the Dominion of New Zealand as to the exercise of the Nauru mandate, the administration of the island and the working of its phosphate deposits.

Reciprocal arrangements within the Empire as to the enforcement of judgments and of maintenance orders will be dealt with presently.

Government of Ireland.—The Home Rule Act of 1914, suspended by successive Orders in Council, was repealed by the new Government of Ireland Act of 1920 (c. 67). The significant new feature is a dualism conspicuous against a background of prospective unity. Ireland is partitioned into Northern Ireland (the six north-eastern counties) and Southern Ireland (the remainder). Each of the two parts is to have a Parliament consisting of a Senate and a House of Commons. If either Parliament is not properly constituted, provision is made for a form of Crown Colony government. To impose this dualism upon the fabric of the 1914 Act was not difficult; to enact the hope of unity was harder. The following enactments explain the plan:

2.—(1) With a view to the eventual establishment of a Parliament for the whole of Ireland, and to bringing about harmonious action between the parliaments and governments of Southern Ireland and Northern Ireland, and to the promotion of mutual intercourse and uniformity in relation to matters affecting the whole of Ireland, and to providing for the administration of services which the two Parliaments mutually agree should be administered uniformly throughout the whole of Ireland, or which by virtue of this Act are to be so administered, there shall be constituted, as soon as may be after the appointed day, a Council to be called the Council of Ireland. . . .

3.—(1) The Parliaments of Southern Ireland and Northern Ireland may, by identical Acts agreed to by an absolute majority of members of the House of Commons of each Parliament at the third reading (hereinafter referred to as constituent Acts), establish, in lieu of the Council of Ireland, a Parliament for the whole of Ireland consisting of His Majesty and two Houses (which shall be called and known as the Parliament of Ireland) . . . and the date at which the Parliament of Ireland is established is hereinafter referred to as the date of Irish union.

On the date of Irish union the Parliament and Government of Ireland takes over all powers of the Council of Ireland and assumes control over all matters which under the Act cease to be "reserved matters" at that date.

The 1914 safeguards for the universities, religious equality, and freemasons are repeated. The Air Force, submarine cables, and wireless telegraphy are added to the list of subjects excluded in 1914 from the legislative powers of an Irish Parliament. Certain other subjects, including the constabulary, postal services, savings banks, designs for stamps, registration of deeds, and the Irish Record Office are "reserved" till the date of union. Customs, income-tax, super-tax, excess profits duty, corporation profits tax, and any other tax on profits are also "reserved," but otherwise the two Parliaments can make laws for imposing and collecting taxes within their respective jurisdictions, except for imposing a tax "of the nature of a general tax upon capital."

Law-making about railways, fisheries, and diseases of animals is left to the Council of Ireland with a view to uniform administration. Orders of the Council of Ireland, made in the exercise of legislative powers, are to be presented (like Bills passed by the Southern and Northern Parliaments) to the Lord-Lieutenant for His Majesty's assent. The Council

may also consider questions affecting the welfare of Southern and Northern Ireland, and may make "suggestions" and "recommendations" in relation thereto. Neither Parliament can repeal Acts (or rules and orders) of the United Kingdom made after the "appointed day." Hence later Acts have sometimes declared themselves to be deemed to have been passed before the appointed day, so as to make them alterable by the Irish Parliaments.

The work of the Joint Exchequer Board and the Irish contribution to imperial liabilities required careful statement. The dualism involved adding provision against double death duties and stamp duties and provision for the inter-availability of excise licences.

A dual judicature is set up. The old Supreme Court of Ireland disappears and is replaced by separate Supreme Courts, each consisting of a High Court and a Court of Appeal. Appeal lies from these to a High Court of Appeal for Ireland, and thence in specified cases to the House of Lords. Constitutional questions requiring speedy determination may, if His Majesty so directs, be referred to the Judicial Committee of the Privy Council, which may also review decisions of the Joint Exchequer Board on points of law.

The power to make adaptations of Acts and to issue Irish Transfer Orders was operated during 1921 as to Northern Ireland. The whole Act (especially as to transfer of services in Southern Ireland) has now to be read in the light of the Irish Free State Act of 1922 and the Orders in Council made thereunder.

Army and Air Force.—In 1918 and 1919 amendments of military law made by the familiar Army (Annual) Act were applied to Air Force law by Order in Council. In 1920 (as in 1921 and 1922) the Army (Annual) Act became the Army and Air Force (Annual) Act. Under this (c. 7) the regimental court martial disappeared from the army as Mr. Justice Darling's Committee had recommended, and the composition of the general court martial was reduced to a minimum of five officers. The valuable power to suspend sentences was made permanent. A new section was added to punish (*a*) wilful obstruction of or interference with an officer or soldier in the execution of his duties, (*b*) wilful production of disease or injury to enable a soldier to avoid military service, and (*c*) supplying drugs or preparations likely to unfit him for service. There were minor amendments as to punishments; and references to general officers were extended to include colonels commandant. The Air Force Act was amended to give effect to these provisions where applicable, and to keep pace with variations in the designations of air officers.

Later in the year the privilege exempting soldiers' and seamen's letters from postage was abolished.

Air Navigation.—The object of the Air Navigation Act (c. 80) was partly to give effect to a Convention signed at Paris on October 13, 1919, laying down uniform rules for international air traffic, and partly to regulate air navigation domestically. The object was attained by giving power to make Orders in Council. In s. 3 a long list is enumerated of matters thus to be regulated—licensing, inspection, and control of aerodromes, aircraft factories, certificates, registration, conditions for carrying goods, mails, and passengers, aerial lighthouses and signals. Air navigation is formally made one of the purposes of the Air Council. Special powers are taken to prohibit navigation and to acquire control

of aircraft, etc., in emergency, subject to compensation. The Air Council —and, with the Council's consent, local authorities—can establish aerodromes. Trespass, nuisance, and responsibility for damage are dealt with. Flying " in such a manner as to be the cause of unnecessary danger " is made an offence. Regulations may provide for investigation of accidents. The wreck and salvage provisions applicable to merchant shipping are applied (as modified by Order in Council) to aircraft on or over the sea or tidal waters. Courts with Admiralty jurisdiction may by Order in Council be given aerial jurisdiction. The Act can be applied by Order to British possessions other than Canada, Australia, New Zealand, South Africa, Newfoundland, and India.

Census.—The census of Great Britain had hitherto been authorized on definite dates by separate Acts such as that of 1910. The Census Act of 1920 (c. 41) allows a census to be ordered by H.M. in Council at intervals of at least five years. The Order in Council may prescribe the census date and the particulars required. The usual particulars are specified in a schedule—name, sex, age, occupation, nationality, birthplace, and so forth. In addition the Order may prescribe particulars " as to any other matters with respect to which it is desirable to obtain statistical information with a view to ascertaining the social or civil condition of the people." In restraint of official inquisitiveness, and possibly in memory of ancient and modern prejudices associated with the numbering of the people, Parliament has insisted that all such Orders in Council are to be laid in draft for its information ; and that part of an Order which prescribes additional particulars is not to take effect unless both Houses by resolution approve of it. A novel provision in the Act allows the taking of a local census on the application of local authorities to the Ministry of Health and at their own expense.

The elasticity of this Order in Council process has already shown its value. The census date was fixed as April 24, 1921. The coal strike caused a postponement, and the date was afterwards fixed as June 19 ; had this happened in 1910, a fresh Act would have been necessary. The corresponding Census (Ireland) Act of 1920 (c. 42) is not so elastic. It prescribed a definite census date (April 24, 1921),[1] and definite particulars one of which is " religious profession."

Coinage.—Silver having risen in 1920 from a pre-war level of under 30*d.* per ounce to 88*d.* per ounce, it was not possible to mint British silver coins except at a loss. To restore the token character of the silver coinage, the standard fineness was reduced (c. 3), with a consequential provision as to legal tender in British possessions.

Finance.—The Budget increased the customs duties on spirits, beer, wine, and cigars. With effect from the end of the year the petrol tax was replaced by a licence duty on mechanically propelled vehicles (elaborated in the Roads Act later). Various stamp duties were raised ; the receipt stamp was increased from 1*d.* to 2*d.* ; certain insurance policies and stock transfers were to cost more. The Finance Act (c. 18) increased the excess profits duty from 40 to 60 per cent., with a small concession for the ex-service man starting in business on demobilization, and with an allowance for contributions to charity, religion, education, or research. A new corporation profits tax took 5 per cent. from the earnings of companies, subject to a preliminary allowance of £500 for a twelve-months

[1] Irish disorders necessitated postponement. This could be effected without a fresh Act by means of a R.O.I.A. regulation. See *S. R. and O.*, 1921, p. 438.

accounting period; building societies and certain statutory undertakings were exempted temporarily. The "standard rate" of income-tax was 6*s*.; the limit of super-tax exemption was lowered to £2,000. Income-tax was levied on new principles, following the report of a recent Royal Commission. One-tenth of earned income was deducted from the total income; the result was called "assessable income." The tax-payer might then deduct a personal allowance of £135 (or £225 if a married man maintaining his wife) and certain family allowances in respect of children and dependent relatives; the result was then called "taxable income." The first £225 of taxable income was to be charged at half the standard rate of income-tax. There were provisions as to the right of husband and wife to claim relief separately, and as to Dominion taxation. Income from school and university scholarships was freed from tax. Land values taxation was abolished, with minor reservations. Its departure in 1920 was more peaceful than its arrival in 1910.

The Savings Banks Act (c. 12) removed limits (save as reimposed by Treasury order) to the amounts deposited in savings banks, replacing a war-time enactment to the like effect. It increased the management allowance, improved the powers of making Post Office Savings Banks regulations, altered the title of War Savings Certificates to National Savings Certificates, and simplified the transfer of the estates of deceased depositors.

Pensions.—Under the Blind Persons Act (c. 49) blind persons, for whose welfare local authorities were directed to make arrangements, were entitled to get their old age pensions at fifty years instead of at seventy.

The Increase of Pensions Act (c. 36) allowed the Treasury (or other authority by whom pensions are granted) to increase pre-war pensions within scheduled limits, subject to statutory conditions as to residence, age, and means. The Treasury could also apply this provision to pensions granted by police, local, or other public authorities.

The War Pensions Act (c. 23) handed over post-war pensions to the service departments. It gave the Minister of Pensions an important power of restoring pensions forfeited under the Forfeiture Act of 1870, and of applying a pension for the benefit of wife, child, or dependents during the imprisonment of a man who has thus forfeited it.

Three Home Office Acts.—Three noteworthy Acts, already mentioned, were founded in part on war-time experience. The Official Secrets Act of 1911 had proved inadequate. As amended in 1920 (c. 75), it now covers various offences as to unauthorized use of uniforms, personation, falsification and forgery of official passes and permits, secret official codes and pass-words, dies, seals and stamps, and the improper retention of official documents. It makes free use of the phrase "for any purpose prejudicial to the safety or interests of the State." It defines "foreign agents"; communication with foreign agents is made evidence of having, for a purpose prejudicial to the State, attempted to obtain information calculated or intended to be useful to an enemy. The definition of a "prohibited place" within the 1911 Act is greatly enlarged. It is now a misdemeanour to "obstruct, knowingly mislead, or otherwise interfere with" police, sentries, or patrols in the vicinity of such a place. It is a statutory duty to give information on demand to a police officer as to offences or suspected offences within the Act. There is a new power for a Secretary of State to require the production of the originals and tran-

scripts of telegrams ; and persons who receive letters for reward at accommodation addresses are to be registered and are to keep books and enter up particulars, such books as well as the letters received by such persons " to be kept at all reasonable times open to inspection by any police constable."

The Dangerous Drugs Act (c. 46) gave effect to the International Opium Convention signed at the Hague in 1912, and redeemed a pledge given in article 295 of the Treaty of Versailles. It restricts the import and export of raw opium, prepared opium, morphine, cocaine, and other drugs, and allows regulations to be made as to their manufacture, sale, and possession. Such regulations have since been made ; they cover prescriptions, delivery to messengers, marking packages and bottles, and the medicine-chests of masters of ships. The Act makes it an offence to smoke opium or to frequent any place used for opium smoking.

The Firearms Act (c. 43) made it illegal to purchase, possess, use or carry firearms or ammunition without a certificate granted by the chief officer of police of the district. Certificates must not be granted to certain prohibited persons (ex-convicts, etc.), or to those of intemperate habits or unsound mind, or to anyone " for any reason unfitted to be entrusted with firearms." An applicant who is refused a certificate can appeal to a court of summary jurisdiction. There are savings for the naval, military, air and police forces, for armed post office officers, for gunsmiths, butchers and knackers, common carriers, and miniature rifles at shooting galleries. Smooth-bore shot-guns and air-guns are excepted from the Act, as also are antiques or " trophies of the present or any former war " if notified to the police. There are restrictions as to manufacture and sale, and prohibitions as to pawn-brokers taking firearms in pledge, and as to persons under fourteen or believed to be drunk or insane. Selling and purchasing under the Act include giving, lending, and hiring. Weapons discharging noxious liquids or gas are " prohibited weapons."

These three Acts are administered by the Home Office. There remain to be noticed other Acts affecting the departments concerned with agriculture, health, justice, labour, trade, and transport.

Agriculture.—Part I of the Agriculture Act (c. 76) was mainly concerned to amend and continue, " until Parliament otherwise determine," the Corn Production Act of 1917 which dealt with the minimum price of wheat and oats, minimum wages for agricultural workers, and the enforcement of proper cultivation. Parliament, however, determined otherwise in 1921 when the 1917 Act and Part I of the 1920 Act were repealed.

Part II, framed generally on lines suggested by Lord Selborne's Reconstruction Committee, contained detailed provisions as to tenants' compensation for disturbance. The phrase " cultivation according to the rules of good husbandry " is used to set up a standard. Compensation for improvements, compensation to a landlord for deterioration of a holding, and arbitration arrangements are other features of Part II.

The Ministry of Agriculture (with the corresponding Scottish and Irish departments) is also concerned in the Seeds Act (c. 54) which governs the sale, use, and testing of seeds for sowing and seed potatoes. The purchaser is to have a written statement giving certain particulars and declaring that the seeds have been officially tested. There are penalties for breach of the Act and for obstruction and tampering with seeds and

samples. It is left for the Ministry, "after consultation with representatives of the interests concerned," to make regulations as to the seeds to which the Act is to apply, and the statute is a good example of reliance upon subsidiary departmental legislation, whereby considerable exemptions have since been granted.

Health.—A fresh National Health Insurance Act (c. 10) was required to increase the rate of benefits in view of the fall in the value of money. Weekly sickness benefit went up from 10*s.* to 15*s.* for men, and from 7*s.* 6*d.* to 12*s.* for women, disablement benefit from 5*s.* to 7*s.* 6*d.* and maternity benefit from 30*s.* to 40*s.* This was met by increasing the contribution from 7*d.* to 10*d.* for men and from 6*d.* to 9*d.* for women, the employer paying 2*d.* out of this additional 3*d.* Arrangements were also made for meeting the increased cost of medical services. Sanatorium benefit was discontinued (except in Ireland), it being stated that the Government had other proposals for dealing comprehensively with tuberculosis.

Justice.—Part I of the Administration of Justice Act (c. 81) gives power to commissioners to try matrimonial causes at assizes, though the necessary machinery to surmount the difficulties of dealing with divorce work on circuit has taken time to create. In replacement of the war-time Juries Act of 1918, provision is made for trial without jury in the High Court, though no order for such trial is to be made (except by consent of both parties) where fraud is alleged or in libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise cases. Similar provision is made for the County Court, but no party is to be entitled to a jury in cases under the Rent Restriction Act. Grand juries being not yet abolished, their labours are lightened where a defendant has pleaded guilty or has admitted a charge before the examining magistrates; a certificate to this effect is to be forwarded to assizes or quarter sessions, and the grand jury there shall forthwith return a true bill without hearing witnesses. The Admiralty jurisdiction of the High Court is extended. The President of the Probate, Divorce, and Admiralty Division is given rank and precedence next after the Master of the Rolls. The Lord Chancellor is allowed to request ex-judges of the Supreme Court to sit either in the Court of Appeal or the High Court, a course already found useful in relieving congestion of business. Other miscellaneous sections deal with fees, the appointment of arbitrators, and the enrolment of deeds. Questions of foreign law are to be decided by a judge alone and not left to a jury. Corporations are made capable of receiving grants of probate.

Part II of the Act facilitates the reciprocal enforcement of judgments in the United Kingdom and in other parts of H.M.'s Dominions. With certain exceptions already discussed in this *Journal*[1]—for example, if there has been fraud or if an appeal is pending—judgments are to be registered. They then operate as if originally obtained on the date of registration in the registering Court, costs being recoverable as if they were sums payable under the judgment. This reciprocal arrangement can be declared by Order in Council to apply to any territory under H.M.'s protection or under British mandate, and to any dominion whereof the legislature has made reciprocal provision. Four such Orders in Council were issued in 1921, and others since.

The Maintenance Orders (Facilities for Enforcement) Act (c. 33) similarly arranges for the enforcement in England and Ireland of main-

[1] See Prof. Berriedale Keith's Note at pp. 310–12 of the 1921 volume.

tenance orders made in other parts of the dominions and protectorates and *vice versa*. Orders in Council may extend the Act to such dominions as have made reciprocal provision or to any British protectorate. Nine such Orders were made in 1921, affecting the Isle of Man and 23 islands, protectorates, etc., in parts more remote.

The Married Women (Maintenance) Act (c. 63) allows orders made under the Summary Jurisdiction (Married Women) Act of 1895, which commit the legal custody of children to a married woman, to include also a direction that the husband shall pay a weekly sum not exceeding 10*s*. for the maintenance of each child under sixteen.

The Juvenile Courts (Metropolis) Act (c. 68) made it possible to direct the holding of such Courts elsewhere than in police court buildings. Such Courts are to consist of a police magistrate nominated by the Home Secretary, and of two justices for the county of London, both of these to be chosen from a panel similarly nominated and one of the two to be a woman.

Labour.—The National Insurance Act of 1911 had embraced both health and unemployment insurance, though the latter had been limited to the building, shipbuilding, iron-founding, and a few other trades. The 1920 Unemployment Insurance Act (c. 30 and see c. 82) extended to nearly twelve million persons at an annual cost to the Exchequer of some £4,000,000. Unemployment insurance in fact was applied almost as widely as health insurance, except that agriculture and domestic service were excluded, though the Minister of Labour might extend the Act to them too. Workmen were to pay higher rates of contribution. Benefit was to be 15*s*. for men and 12*s*. for women, insured contributors under eighteen receiving only half those sums. Statutory conditions for the receipt of benefit included proof that not less than twelve contributions had been paid, that the applicant had been continuously unemployed, was capable of and available for work but unable to obtain suitable employment. These conditions were not to be deemed broken by the decline of " an offer of employment in a situation vacant in consequence of a stoppage of work due to a trade dispute." The following provision came into prominence later:

> 8.—(1) An insured contributor who has lost employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop, or other premises at which he was employed shall be disqualified for receiving unemployment benefit so long as the stoppage of work continues, except in a case where he has, during the stoppage of work, become *bona fide* employed elsewhere in the occupation which he usually follows or has become regularly engaged in some other occupation.

A feature of the Act is the now not unfamiliar power of the Minister to act quasi-judicially in the deciding of various questions under the Act, subject to appeal.

Industries could contract out of the general scheme by setting up schemes of their own to be approved by the Minister by special order.

At the end of the year the Unemployment (Relief Works) Act (c. 57) facilitated the acquisition of and entry on land required for works of public utility—roads, bridges, improvement of harbours and waterways, sewers, and waterworks, afforestation, and land reclamation or drainage.

The International Labour Conventions of Washington in 1919 and Genoa in 1920 as to the minimum age for admission of children to indus-

trial employment or employment at sea, and as to the night work of young persons and of women employed in industry, are scheduled to the Employment of Women, Young Persons and Children Act (c. 65) which gives effect to them. The Act also deals with the work of women and young persons in shifts, a matter to be authorized by Home Office orders.

A recommendation adopted by the same Washington Conference is scheduled to and enforced by the Women and Young Persons (Employment in Lead Processes) Act (c. 62), which is linked with the Factory and Workshop Acts.

Trade.—In addition to the restrictions on overseas traffic in opium, there was a Fertilizers (Temporary Control of Export) Act (c. 44), and a Dyestuffs (Import Regulation) Act (c. 77) which took effect till the end of 1922 and the beginning of 1931 respectively.

The object of the Overseas Trade (Credits and Insurance) Act (c. 29) was to re-establish foreign commerce and do something to improve international rates of exchange. The Board of Trade, with the consent of the Treasury and the help of an advisory committee, could for three years grant credits—up to an aggregate of twenty-six million pounds—to British traders and companies for the export of British goods to certain scheduled countries including Poland, Czecho-Slovakia, the Serb-Croat-Slovene State, and Rumania. The Board of Trade could add other countries to this list, but by a 1921 amendment the Act was extended to all countries. The State also undertook to insure the goods against abnormal and exceptional risks. No credits were to be granted to aliens or to firms or companies in which British subjects had not a controlling interest.

The Public Utility Companies (Capital Issues) Act (c. 9) authorized for five years the raising of capital in fresh forms (subject to departmental consent) by statutory undertakings for the supply of gas, water, hydraulic power and electricity, and by tramway companies.

The Board of Trade carried through a Gas Regulation Act (c. 28) which was partly based on the advice of the Fuel Research Board as to economy of coal. The latter Board had recommended (*a*) that the standard of charge should be thermal units instead of cubic feet, the unit of charge to be a "therm," *i.e.* 100,000 thermal units, a thermal unit being the amount of heat required to raise 1 lb. of water 1 degree Fahrenheit; (*b*) testing by standardized machinery recognized by the Board of Trade; (*c*) that gas should contain no sulphuretted hydrogen and that there should be a limit to incombustible constituents; (*d*) that undertakers must declare the calorific value they mean to supply and must give notice of any change therein, adjusting a consumer's burners at their own expense to meet such change; and (*e*) that pressure be two inches on any main. These recommendations are embodied in the Act, which was said to affect £140,000,000 of capital administered by over 800 local authorities and statutory undertakings. Such capital is subject to restriction of dividends. As costs had been doubled, a new basis of standard or maximum charges, which *inter alia* was to take into account the war-time rise in gas companies' expenses, was accepted as reasonable. A new special order system (drafts requiring approval by resolution of both Houses) was set up for authorizing such matters as amalgamations, joint working arrangements, superannuation funds, and raising of capital.

Transport.—The Roads Act (c. 72) amplified administrative details for imposing the new mechanically propelled vehicles tax. It set up a

Road Fund to replace the old Road Improvement Grant, to receive the new licence fees and penalties and to reimburse local authorities; and it substituted the Minister of Transport for the Road Board. There was a new definition of "weight unladen." The Minister could make regulations as to registration of vehicles, identification marks, etc.

Road construction, with special reference to "arterial roads," has already been mentioned as an object of unemployment relief work.

Miscellaneous.—Among miscellaneous statutes was one (c. 20) to provide the Royal College of Veterinary Surgeons with funds for the conduct of examinations and prosecutions and the promotion of science by making members pay an annual fee of a guinea. Persons registered as "existing practitioners" were allowed to style themselves veterinary surgeons and were to be subject to the discipline of the Royal College. There was a section as to offences committed by persons practising under cover of corporateness, which may be compared with s. 8 (5) of the Official Secrets Act of 1920.

Of other Acts, to be mentioned more briefly, the Ready Money Football Betting Act (c. 52) created a new offence punishable on summary conviction. The Duchy of Lancaster Act (c. 51) extended the powers of investing duchy funds and dealt with the duchy solicitor. The Imperial War Museum trustees were incorporated (c. 16) and their constitution, powers, and staff provided for. The Board of Trade was authorized to guarantee the expenses of the British Empire Exhibition up to £100,000 (c. 74). The Public Works Loans Act (c. 61) had this year to make a fresh quinquennial appointment of Commissioners; it also permitted advances from the Local Loans Fund to local authorities for housing. Acts were passed authorizing the enfranchisement of the sites of places of worship held under lease (c. 56), and reducing temporarily the rates payable in respect of ecclesiastical tithe rent charge (c. 22). Small amendments were made as to General Lighthouse Fund payments in the Merchant Shipping Act (c. 2) and as to service voters and proxy voting in the Representation of the People Act (cc. 15, 35).

Scottish Acts.—Important changes in "lawyers' law" are made by the Married Women's Property (Scotland) Act (c. 64), which abolishes the husband's right of administration over his wife's property, and leaves him curator to his wife during her minority only. Married women now have the same power of disposing of their estate and the same contractual capacity as if they were unmarried, but they are to be liable for maintaining their indigent husbands. Donations *inter virum et uxorem* are made irrevocable by the donors.

Other purely Scottish Acts deal with the enrolment of women jurors (c. 53), the letting and rating of small dwelling-houses (c. 8), the compulsory hiring of houses (c. 71), the payment of duplicands of feu-duties (c. 34), and the appointment of a Registrar-General of Births, Deaths, and Marriages in Scotland (c. 69). The fishing-boat provisions of the Merchant Shipping Act of 1894 were extended to Scotland (c. 39). The public libraries rate limit was increased (c. 45) from 1*d.* to 3*d.*

Irish Acts.—The public libraries rate limit was also increased for Ireland (c. 25). A Resident Magistrates (I.) Act (c. 38) empowered the Lord-Lieutenant to prescribe salaries and allowances. A Bank Notes (I.) Act (c. 24) provided that an Irish bank of issue need not pay its notes on demand at local branches, but should be free, as Scottish and Dominion banks mostly are, to pay at head offices only. The Sheriffs

(I.) Act (c. 26) dealt with the appointment, powers and duties, disqualification, and salary of under-sheriffs, and empowered County Court judges to enforce performance of those duties ; it also contained sections as to fees, adaptations of enactments, etc., and an " appointed day " clause.

The Census (I.) Act, Government of Ireland Act, and Restoration of Order in Ireland Act have already been discussed. The Criminal Injuries (I.) Act (c. 66) dealt with the recovery of compensation on decree against a county council, the deduction of compensation awards from Government funds or parliamentary grants payable to a council, rate-making and borrowing powers for raising money for compensation, and the addition of 5 per cent. interest to compensation awards.

Departmental Legislation.—As a pendant to this summary, it may be added that along with 82 Public General Acts for the year 1920 there were also some 930 Statutory Rules and Orders of a public general character. At the end of the two stout volumes issued by the Stationery Office to contain so much of the year's departmental legislation as was in force on December 31, 1920, there is a table showing that these Statutory Rules and Orders altered at least 69 Acts of Parliament during the year.

The administrative area covered by this system of subordinate law-making is prodigious. There are regulations about education and housing, health and unemployment insurance, the Air Force rules of procedure, Supreme Court and County Court rules and fees, important disciplinary codes under the Police Act, trade boards machinery, " appointed day " orders which press the button and bring Acts into operation, and orders which reshuffle statutory powers amongst various departments in consequence of the recent creation of the Health and Transport Ministries. More than half the Acts of Parliament passed in 1920 delegate to departments or other authorities the power to make supplementary legislation.

2. ISLE OF MAN.

1919.

[*Contributed by* LLEWELLYN KNEALE, ESQ.]

During 1919 seventeen Acts were passed by the Manx Legislature.

1. The Civil Registration (Births and Deaths) Amendment Act, 1919, amends the Civil Registration Acts, 1849 to 1910, by adding thereto sections similar to sections 10, 11, 15, 20, 24, 39, and 40 of the Births and Deaths Registration Act, 1874, 37 & 38 Vict. c. 88.

2. The Workmen's Compensation Act, 1919, is a reproduction, *mutatis mutandis*, of the Workmen's Compensation Act, 1906, 6 Edw. VII, c. 58.

3. The House of Keys Election Act, 1919, amends the House of Keys Election Act, 1866, and makes certain alterations in the existing law, the most important of which is that a woman shall not be disqualified by sex or marriage from being elected or sitting or voting as a member of the House of Keys.

4. The Wills (Soldiers and Sailors) Act, 1919, is a reproduction, *mutatis mutandis*, of the Wills (Soldiers and Sailors) Act, 1918, 7 & 8 Geo. V. c. 58.

5. The Attorneys Act, 1919, amends the Attorneys Act, 1826, and empowers the Governor to reduce the years of apprenticeship of law students who have served with His Majesty's Forces since August 4, 1914.

6. The Isle of Man Constitution Amendment Act, 1919, makes certain amendments in the Constitution of the Isle of Man. The Governor is to convene meetings of the Tynwald Court upon receipt of a request signed by a majority of the members of either branch of Tynwald, and is to convene a meeting of the Legislative Council upon receipt of a request signed by a majority of the members of the Council, and is to convene a meeting of the House of Keys upon receipt of a request signed by a majority of the members of the House. The Archdeacon, the Vicar-General, and the Receiver-General cease to be members of the Legislative Council, and, in future, the Council will consist of the Bishop, the first Deemster, the second Deemster, four members to be elected by the House of Keys, and two members to be appointed by the Governor. The members elected and appointed hold office for four years, and may be re-elected or re-appointed. A person elected by the House of Keys must be a male not less than twenty-one years of age, and must, at the date of his election and so long as he continues in office, be resident within the Island; and every person appointed by the Governor must be a male not less than twenty-one years of age, and must, at the time of his appointment and so long as he continues in office, be resident within the Island and not be in receipt of a salary payable by the Imperial or Insular Government. The Act contains provisions for filling up casual vacancies, and specifies certain disqualifications upon the happening of which the member vacates his seat. Any member of the Council authorized by the Governor may appear before the House of Keys whenever a Government Bill is before the House, and shall enjoy such privilege of audience and speech as the House by Standing Order shall determine, but shall not have the right of voting. Power is given to the Tynwald Court to make rules requiring Boards and Committees appointed by Tynwald to make periodical reports of their proceedings; and power is also given to Tynwald at any time by resolution to declare that all or any of the members of any Board of Committee appointed by Tynwald shall cease to be members of such Board or Committee.

7. The Brewers Act, 1919, makes certain amendments in the Brewers Acts, 1874 to 1918.

8. The Adulteration Act, 1919, amends the Adulteration Act, 1912, and provides that in determining whether an offence has been committed under s. 4 of the Adulteration Act, 1912, by selling to the prejudice of the purchaser spirits not adulterated, otherwise than by the admixture of water, it shall be a good defence to prove that such admixture of water has not reduced the spirits more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.

9. The Trustee Act, 1919, provides that trustees may, unless expressly forbidden by the instrument creating the trust, invest any trust funds for the time being in their hands in any investments authorized by the law of England for the time being as an investment for trust funds, and may vary such investments at discretion.

10. The Douglas Municipal Corporation (Honorary Freedom of the Borough) Act, 1919, empowers the Council to admit to be Honorary Freeman of the Borough persons of distinction, and persons who have rendered eminent services to the borough.

11. The Education (Amendment) Act, 1919, makes certain small amendments in the Education Act, 1893.

12. The Great Enquest Abolition Act, 1919, abolishes the Great En-

quest Act. The Great Enquest was a jury who once a year were selected and sworn to watch and report upon interferences with public rights of way and such-like matters. The Act recites that for many years the Enquest had rarely been called upon to discharge any duties, and enacts that the Great Enquest and all proceedings before it shall cease and determine, and that any matter cognizable before it shall be tried and determined by, and fall within, the exclusive jurisdiction of the court of law having cognizance of the same.

13. The Destructive Insects and Pests Act, 1919, is founded upon, and practically reproduces, 40 and 41 Vict. c. 68 and 7 Edw. VII.

14. The Tynwald Court Adjournments Act, 1919, provides that whenever it may be necessary to adjourn the Tynwald Court from one day to another or from place to place, without such Court having assembled, it shall be lawful for the Governor, or, in case of his incapacity, for a Deemster, by writing under his hand to authorize the Clerk or Secretary to such Court, or any Coroner, to attend at the place and time for which Court has been convoked, and adjourn the same to the day, time, and place which may be appointed by such writing. And any adjournment to be made in pursuance of such writing shall for all purposes be as valid as if made by the Governor when such Court was duly assembled.

The Act also validates certain adjournments of Tynwald made in 1918, doubts having arisen as to the validity of such adjournments.

15. The Educational Endowments Amendment Act, 1919, empowers the Council of Education to act as trustees of any Educational Endowment, and authorizes them to invest any personal estate in their hands upon the investments specified in the Act.

16. The Civil Registration (Marriages) Amendment Act, 1919, amends the Civil Registration Act, 1910.

17. The School Teachers' Superannuation Act, 1919, makes a provision with respect to the grant of superannuation allowances to teachers, and of gratuities to their legal personal representatives, and amends the Elementary School Teachers' Superannuation Act, 1901, and the Elementary School Teachers' Superannuation Act, 1913.

3. JERSEY.

[*Contributed by* E. T. NICOLLE, *Vicomte of Jersey*.]

1. The States of Jersey on March 11, 1920, passed an Act making the prescriptions of the Aliens Restriction (Amendment) Act, 1919, applicable to Jersey.

2. Education Act, passed by the States on May 7, 1920, and confirmed by Order in Council on November 9, 1920.

This Act brings secondary education under the control of the States. A special committee for public instruction, consisting of twelve members, of the States (with power to co-opt four members from the public (with consultative but not voting powers), now supervises elementary, secondary (both sexes), and technical education.

Special education is to be provided for the blind, deaf, dumb, and weak-minded.

The children are subject to medical and dental inspection.

Scholarships from the elementary schools to the secondary schools are provided for the children of needy parents.

II. NORTH AMERICA.

1. DOMINION OF CANADA.

[It is hoped to publish the summary of legislation in the next Review.]

2. ALBERTA.

[*Contributed by* JOHN D. HUNT, ESQ., K.C., *Clerk to the Executive Council.*]

The third session of the fourth legislature of the Province of Alberta opened on February 17, and closed on April 10. Very little time was spent in the discussion of the Speech from the Throne or in debates of a party nature, the Members appearing to be unanimous in the resolve to make the session a business one, to do the work required of them and to get away home. While there was not much legislation dealing with entirely new matters, that brought before the House was important, and received careful consideration in Committee.

Among the new Acts the first in importance is the Irrigation Districts Act. It provides for the formation of large areas in the southern part of the Province, where the drought has been a heavy set-back during the past few years, into irrigation districts.

Formation of a district may be started by filing petition with the Minister of Public Works signed by owners of at least one-half of the proposed area, and with the petition the report of an engineer that the scheme is feasible and a deposit sufficient to cover preliminary expenses. After due notice, if no substantial objection has been made in the opinion of the Minister, he may have a vote taken on the scheme and for election of a board of trustees to act in the event of two-thirds of those voting being in favour of going on, and in such cases the Minister may by order form the lands described in the petition into an irrigation district. While the local owners have all the powers necessary for the construction, maintenance, and operation of irrigation works, the Act further provides for an Irrigation Council of one, two, or three members to be appointed by the Lieutenant-Governor in Council, whose duty it shall be to advise every board upon the conduct of the affairs of its district and who may veto any act or course of conduct proposed by the board. No money received from sale of debentures can be expended, no rate of assessment be effective, no contract for the construction of any work be valid until the same has received the assent of the Council. The rate of interest, the form of debentures and arrangements for their disposal must be approved by the Provincial Treasurer. The procedure in cases of default in debenture charges is drastic, and those who go into the scheme do so realizing that they must meet their obligations and not depend upon Government assistance.

The Lethbridge Northern Irrigation District, which includes 100,000 acres now, and more is being added to it, comes under a special Act, the provisions of which are very similar to those of the general Act.

The Water Users' District Act supplements the Irrigation Act, and enables local communities to elect three persons as a board of management to take water from the canal controlled by an irrigation district, provide for its equitable distribution, for making and repairing of ditches, for the imposing of an annual rate per acre on the area irrigated, and generally for the conduct of the business of the association.

Realizing the necessity of giving assistance to settlers in crop-failure areas, the Municipal Districts Relief Act gives a municipal council power to supply relief to residents from money borrowed on Government guarantee.

Under an Act respecting Advances for the Purchase of Feed and for Assistance to Farmers provision is made for direct relief up to June 1 by advance of feed, hay, fodder, flour, and any other commodity necessary for the sustenance of life of man or animal, the advance being secured by him on land or chattels or both.

The Seed Grain Act, 1920, the Act to empower municipal districts to borrow money on Government guarantee to supply seed grain to settlers, along with the Mortgagees' Seed Grain Security Act, passed last year, gives ample opportunity for settlers to secure grain for seeding purposes.

Telephones are dealt with by an Act to Authorize the purchase by the Government of the Red Deer telephones for the sum of $85,000, and by power given to raise by loan the sum of $4,000,000 for the extension of the Provincial telephone system.

The possibility of having to take over the Ed. and B. C. Railway is anticipated by an Act giving the Lieutenant-Governor in Council authority to arrange with the company for the appointment of a receiver, upon the request of whom the Government may borrow and expend up to $1,000,000 for the purpose of improving the line, keeping it in repair, and effectively operating it. A further sum up to $100,000 may be borrowed and used for like purposes in the event of any other guaranteed railway making default and being taken over by the Province.

The chief work of the Session outside of the foregoing was amending Acts already in force. A number of new Acts were passed last year relating more especially to municipal and health matters, and in their administration during the year certain changes were found advisable.

Under the Municipal Hail Insurance Act, insurers are required in their return to the secretary-treasurer to state whether they want to insure for $6, $8, or $10 per acre, and if they do not do this they will only get $6 per acre in case of total loss. Hail indemnity under the Act is exempt from garnishment, attachment, or execution.

The amendments to the Municipal District Act include payment to councillors for fifteen days spent in laying out and inspecting municipal work, payment of expenses of members of the council on deputations to attend to matters affecting the district, the taking away of the power of the Minister to dismiss a council, the posting of the voters' list in each division for that division only, the increasing of the maximum amount of grant or guarantee to a local doctor from $500 to $2,000, complete provisions for the taking of lands for roads and fixing the compensation therefor, fixing by resolution from time to time instead of by by-law the places where and the persons with whom animals distrained may be impounded, providing that animals not released within ten days, instead of thirty, after last notice may be sold. Similar provisions in the Municipal District Act, Town Act, Village Act, and Improvement District Act make the municipality liable for due provision for the relief of the poor and the care and treatment of the needy sick, including actual hospital expenses, except medical or surgical fees. The municipal district assessor must assess land by valuation in 1920 and send a statement of the total assessment on completion thereof to the Department of Municipal Affairs for

equalization purposes. Forfeited lands may be sold, leased, or otherwise dealt with by municipalities without the approval of the Minister.

Villages and towns are given power to raise their revenue by assessment on land and by one or more of the following means:

(*a*) By a tax on buildings and improvements; (*b*) by a tax on all persons carrying on any trade, business, or profession; (*c*) by a tax on personal property. The 10 per cent. maximum of rental value of premises as a business tax has been repealed, and the council of a village or town is given power to classify businesses, trades, and professions, and to levy different rates on different classes. A personal property tax may be imposed by by-law carried by a majority vote instead of two-thirds as formerly.

The rate in improvement districts for 1920 is fixed at five cents per acre and for 1921 and annually thereafter at five mills on the dollar of the assessed value. The fact that improvement districts have been made liable for their needy and sick and for the maintenance of their mental defectives calls for the higher levy.

The father and the mother are given equal parental rights as to the guardianship, custody and control, and estate of their infant children.

The Commissioner of Provincial Police may conscript the services of any municipal police or constables, and may assume the conduct of the investigation or prosecution of any crime in or in the vicinity of any municipality.

Any contract for the sale of any automobile carries an implied warranty that repairs for same will be available for a period of five years from the date of sale at some place in the cities of Calgary and Edmonton.

The Wolf Bounty Act has been repealed.

Where taxes have been paid on soldiers' exempted lands, instead of the amount being retained to meet future levies, any surplus over taxes payable to date may be returned on request to the party entitled thereto.

School Ordinance amendments provide for election of trustees in rural districts by ballot, for expropriation of land for a teacher's residence, for calling a meeting of ratepayers at any fixed hour between two o'clock and seven o'clock p.m., and for the establishment on the University grounds, Edmonton, of a teachers' training institution.

The School Assessment Ordinance is amended by making provision that the secretary-treasurer shall make a return before July 1 in each year to the proper municipal authority of all lands in arrears for taxes the previous January 1, and the municipality will hereafter deal with such arrears under the Tax Recovery Act. Where tax-enforcement proceedings have been commenced before the passing of this amendment, such proceedings shall be continued by the trustees in the old way. Trustees in rural districts may levy a tax rate exceeding sixteen cents per acre.

The School Grants Act gives a school district permission to purchase a school flag or other equipment approved by the Minister out of the library grant, to give a grant up to $15 to a rural school district towards equipment for serving hot lunches, and makes provision for the payment of one-third of the costs of grounds for teachers' residences.

Under the School Attendance Act, the maximum fine has been fixed at $10 for a first offence, $25 for a second, and $50 for a third in the case of parents or guardians failing to have children under their care at school.

The amendments to municipal financial acts are very important. The Act to amend the Supplementary Revenue Tax Act provides that

the tax for 1920 in cities, towns, and villages shall be one mill on the dollar of the assessed value of rateable land; and in municipal districts and improvement districts four cents per acre, or such reduced rate as has been fixed by the Tax Commissioner. The holders of grazing leases shall pay a tax of one cent per acre.

In 1921 and annually thereafter the tax shall be two mills on the dollar of the equalized assessed value of all rateable lands in the Province, subject to a minimum tax of ten cents, where the levy on any fractional lot or quarter section would fall below that amount. Holders of grazing leases will continue to pay a tax of one cent per acre.

For the purposes of this Act, the Assessor in every city, town, village, municipal district, and improvement district must assess in 1920 by valuation and forward to the Department of Municipal Affairs on completion of the assessment a statement of the total assessed value of the land in every such municipality.

A Board of not less than three nor more than five persons, to be called the Assessment Equalization Board, appointed by the Lieutenant-Governor in Council, shall determine the total equalized assessed value of all rateable lands of each and every municipal unit in the Province. This Board shall commence work not later than May 1, 1920, and shall make its first report to the Minister of Municipal Affairs not later than January 10, 1921, and the said report shall contain a schedule showing the total equalized assessed value, for the purposes of this Act, of every municipal unit in the Province. A subsequent report shall be made by the Board on or before January 10, 1926, and every fifth year thereafter.

Upon receipt of the report of the Board, the Minister will advise the secretary of each municipal unit of the amount of the equalized assessment of such municipality, and the said amount, if confirmed by the Board, shall be the local assessed value of the said municipality for the current year. Upon advice from the Minister of said amount in every case in which the Board does not confirm the total assessed value as reported to the Department of Municipal Affairs by the Assessor, it shall be the duty of the Assessor immediately to raise or lower, proportionately, the assessment of all lands within the district, so that the total value of the lands so raised or lowered shall be equal to the equalized assessment so fixed by the Board; and the assessed value of all lands so determined shall, subject to appeal, be the values for any purpose, under any Act whatsoever, requiring the taxation of land, according to value. Provided —that where there is an increased local assessment in any year in any rural unit, caused by more land coming under assessment after equalization by the Board the assessed value of such land as fixed by the Assessor shall, until the next equalized assessment by the Board, be added to the total equalized assessment of such unit as last fixed by the Board; and the assessment of any land formerly assessed, that has ceased to be assessable, shall be taken from the total equalized assessment, and the total thus obtained shall be the total equalized assessment for the year, and shall be taxed at the said rate. And provided further, that where the total assessment of any city, town, or village, as fixed by the assessing officer, exceeds the total equalized assessment as fixed by the Board, to such an extent as in the opinion of the council to make the acceptance of such equalized assessment impracticable for municipal purposes, the Assessor or other tax-collecting officer, as the case may be, shall strike a rate of taxation on the amount of assessment, as fixed by him, that shall yield taxes under

this Act, at the rate of two mills on the dollar, upon the total equalized assessment as fixed by the Board.

Lands forfeited to the Crown under the Educational Tax Act and the Wild Lands Tax Act shall, until resold, be exempted from taxation under this Act.

An Act to amend the Tax Recovery Act provides that where under any Act or Ordinance forfeiture proceedings have been commenced by any municipal or school tax-collecting authority before the coming into operation of this Act, the procedure in force at the time of such commencement must be followed all through by the tax-collecting authority, even where the Acts containing the procedure have been repealed.

In all tax sale proceedings not heretofore commenced, such proceedings shall be taken by the treasurer of the town, village, or municipal district in which the lands are situated, and the provisions of this Act shall apply to such lands and to all proceedings taken for collection of the arrears of taxes due thereon. Where under any statute heretofore or hereafter enacted a tax other than a tax levied by or payable to a town, village, or municipal district is imposed upon any land situated therein, the officer or person whose duty it is to collect such tax shall, not later than July 1 in each year, forward to the treasurer of the town, village, or municipal district a statement showing all arrears of any such tax imposed previous to January 1 of such year, with the names and addresses, if known, of the persons by whom such arrears are payable, and the treasurer shall include in the list all arrears of taxes shown in any of the statements forwarded to him, and such arrears shall thereafter be dealt with for the purposes of this Act in the same manner as arrears owing to the town, village, or municipal district. This means that the town, village, or municipal district shall take tax-recovery proceedings against lands in arrears to school districts, and care should be taken to see that the statement of arrears is sent to the treasurer of the town, village, or municipal district before the first day of July in each year.

A section is added to the Act bringing improvement districts under its provisions, and giving the Minister of Municipal Affairs all the powers assigned to the treasurer of the council dealing with lands in a municipality.

The officer or person whose duty it is to collect school taxes in improvement districts shall, not later than July 1 in each year, forward to the Department of Municipal Affairs a statement of all arrears to January 1 in such year, with the names and addresses, if known, of the persons by whom such arrears are payable, and such arrears shall thereafter be dealt with in the same manner as arrears owing to the Department of Municipal Affairs.

In preparing list for tax sale, lands or part of lands to which the municipality has obtained title may be omitted, and any such lands may be exchanged for other lands or sold by public auction or private sale at such price as may be fixed by resolution of the council, one-tenth of the price to be paid in cash. A tax sale list must now be advertised in one issue of a newspaper, or if directed by the council it may be printed in pamphlet form and distributed.

A sale may be held not later than December 15. At the sale the municipality may bid up to the minimum value placed thereon, and any lands offered for sale for which the minimum price has not been bid shall therefore become the property of the municipality, subject to redemption. After lands have been vested in it the municipality may take proceedings

to cancel the plan of any block or subdivision, to close streets and lanes, and to dispose of the lands as acreage or farm lands.

Power is given municipal councils to sell, lease, or otherwise deal with forfeited lands without the approval of the Minister, and the Minister of Municipal Affairs is given equally wide powers to deal with forfeited lands in improvement districts. The object of this is to have the lands sold and get them back on the tax roll as soon as possible.

An Act Respecting Subdivisions and Other Property is also of importance. Under the Act the Commissioner was given power, upon notice to all parties interested, to determine to what amount taxes in arrears might be reduced and what amount or percentage should be paid from time to time and the time of such payment, and in case of default to transfer the title to the municipality, subject to any and all encumbrances. The amendment gives him power to transfer the title free from all encumbrances.

The Municipality Finances Commission Act, which takes the place of an Act to Ameliorate the Financial Conditions of Municipalities, which has been repealed, gives a commissioner or commissioners power, at the request of the Minister, or of any municipality, or of the holders of one-fourth in value of the amount of the bonded indebtedness of any municipality, to investigate the financial affairs of the municipality, to consult with the representatives of the debenture holders and other creditors and any class or classes of ratepayers, and to recommend some scheme for the equitable settlement of the financial affairs of the municipality.

Every recommendation shall become effective and binding upon all parties interested therein or affected thereby upon obtaining the consent of the holders of three-fifths in value of the amount of the bonded indebtedness of the municipality, and upon the same being approved by the Lieutenant-Governor in Council.

The Lieutenant-Governor in Council is empowered to dismiss any council failing to discharge any financial liability of the municipality, and to appoint an administrator of its affairs, with all the powers of a council and its appointed and elected officers.

Another Act affecting financial interests generally is an amendment to the Judicature Ordinance, the Judicature Act and the Land Titles Act.

Unless otherwise ordered by the Court or a judge, the judgment or order of the Court in any action brought upon a mortgage of land shall provide that the amount adjudged or ordered to be paid by the defendant shall be realized in the first instance *pro tanto* by a sale of the land mortgaged; provided that the Court or a judge may for good cause shown permit the plaintiff by order to realize the amount of his claim out of any other property of the defendant, and the Court may make an order of injunction or order for the appointment of a receiver in the action for the purpose of preventing the disposal by the defendant or by any person to whom he has transferred his property under circumstances giving ground for the suspicion that he has done so with the intent to defeat, hinder, delay, prejudice, or defraud his creditors or any of them, of any or all of his property pending the result of realization of the property mortgaged, and may vary, amend, or cancel such order or orders from time to time as may seem just, or may order foreclosure instead of sale in proper case.

The plaintiff in any action heretofore taken on a mortgage of land may apply to the Court or a judge for any order that might be obtained by a plaintiff in any such action hereafter taken. Provision is also made for

the registration of a certificate of judgment in an action which shall have the same force and effect as the receipt by the registrar of a copy of a writ of execution issued on a judgment, provided that the defendant may apply to the Court or a judge for an order releasing lands or any portion thereof other than the mortgaged lands from the effect of the said certificate, and the Court may make such order upon such terms as shall be just.

The Workmen's Compensation Act amendments do away with the maximum compensation of $2,500 where death or total disability results from an injury, and provides for increased payments in many other cases. Any employer engaged in any industry which does not come within the scope of the Act may have all his employees brought within the provisions of the Act upon certain conditions.

The liquor question is dealt with by the following resolution passed by the Legislature in conformity with the requirements of the Canada Temperance Act for the taking of a plebiscite:

"That this Legislative Assembly requests that votes of the electors in all the electoral districts of the Province may be taken for or against the following prohibition, that is to say: 'That the importation and the bringing of intoxicating liquors into such Province may be forbidden.'"

The Liquor Export Act is amended as follows: No person shall within the Province of Alberta have, expose, or keep liquor for export sale, unless such liquor is kept in a bonded liquor warehouse located in an incorporated city in the Province.

Any person having quantities of liquor formerly held under the Liquor Export Act shall be allowed thirty days after the passing of this Act in which to dispose of the stocks which they have on hand.

Any person who violates any of the provisions of the Act or any regulation made thereunder shall be liable, on summary conviction, to a penalty of not less than $500 nor more than $2,000 and costs, and in default of payment to imprisonment for not less than three months nor more than six months with hard labour.

In any prosecution under the Act or regulations the burden shall be on the accused of proving that the premises on which he is doing business are premises in which he is entitled to carry on such business, and of proving that the provisions of this Act or any regulations thereunder with the violation of which he is charged have been duly complied with.

3. BRITISH COLUMBIA.

[*Contributed by* H. G. GARRETT, ESQ., *Registrar of Joint Stock Companies.*]

Acts passed—114: Public—105; Private—9.

Adoption of Children.—By c. 2 adoption of a child is made legal and binding with the sanction of the Court and the consent of the parents, the minor if over 12 years of age, and other parties according to circumstances. The effect of adoption under the Act is that the natural parents are replaced for all purposes by the parent by adoption and the minor takes his or her name. As regards inheritance and succession to property an adopted child becomes the heir of the new parent, but does not lose his rights of inheritance from his natural parents; and provision is made for the case of an adopted child dying intestate. A record of the orders

made by the Court will be kept by the Provincial Secretary, who is also authorized to issue a certificate of adoption equivalent to an order of Court when a child has been previously adopted under an agreement.

Animals.—C. 5 prohibits the running at large of swine, stallions, and bulls, except in districts defined by the Executive Council, while c. 16 authorizes the Crown to take possession of and care for horses, cattle, etc., abandoned or neglected by their owners and confers a lien for the charges incurred.

Bailment.—C. 101 gives warehousemen storing goods a lien for their charges and disbursements, and power to enforce by sale at public auction. Any surplus must be paid into the Supreme Court Registry.

Companies.—C. 14 revises the provisions of the Companies Act relating to companies with objects restricted to mining, and authorizes them to issue shares at a discount.

Co-operation.—C. 19 consolidates the legislation relating to co-operative associations and provides a simple, elastic, and up-to-date Act, which does not adhere too closely to the somewhat rigid, traditional principles of co-operative enterprise. The procedure and regulation are assimilated to the Companies Act.

C. 3 amends the Agricultural Act, 1915, with the same object and simplifies the position of Farmers' and Women's Institutes, to which an annual *per capita* grant may be made by the Government.

In this connection too may be mentioned the Societies Act (c. 83), which repeals various old Acts and offers a wider scope for incorporation. Societies may be formed to promote almost any purpose for which organization and joint endeavour is required. But under this Act no society can trade, have a capital, or pay a dividend, and the interest of a member is not transferable.

Education.—C. 82 specifically provides for a Department of Education under a Minister so entitled, the Provincial Secretary having hitherto administered the law relating to public schools. Provincial grants-in-aid are made dependent on the regular employment of dental surgeons and nurses in connection with schools, and School Trustees are empowered to provide for the examination and treatment of children's teeth. Kindergarten classes for children between four and six years of age may be maintained by school authorities. The expenses of conveying children to and from school may be defrayed by the Trustees in a rural school district. Provision is made for the establishment of "community rural school districts," applicable to persons living in a settlement under communal or tribal conditions. All teachers are required to hold a certificate of qualification issued by the Department.

C. 86 authorizes the establishment of a "Subnormal Boys' School" with a view to industrial training and moral reclamation. The Medical Superintendent in charge of mental hospitals is the officer in charge. Boys may be transferred to the school from prison or from the custody of a children's aid society.

Elections.—C. 27 is a new Provincial Elections Act, which starts with a clean slate by cancelling all existing lists of voters and providing machinery for compiling new lists. The Act does not in the main depart from established principles, but contains various novel features. Voters (which includes women) must be adult British subjects, natural-born or naturalized, and residents of the Province for six months and in an electoral district for one month before an election, and duly registered as

voters. Orientals, persons convicted of crime, whose sentence has not expired, and "deserters" as defined are disqualified. Rules for determining residence are laid down. The Executive Council appoints a Registrar of Voters for each electoral district and Deputies as necessary. A Court of Revision sits in May each year, and at other times if so ordered. The names of voters who did not exercise their franchise at any election must be struck off at the next revision. A voter on the list for more than one electoral district is prohibited from voting.

When an election is proclaimed, the Executive Council appoints returning Officers and Clerks and determines the polling divisions. Election Day is the same in all districts, being the twenty-first day after the day fixed for the nomination of candidates, which is itself fixed by the Proclamation. Candidates must be nominated in writing by two registered voters and the nomination assented to by the candidate and by at least ten other registered voters; but no money deposit is required. Candidates may in writing appoint election agents, who are disqualified as voters if paid. The conduct of an election and the preparations for it are carried out by the Returning Officer subject to the Act. The Presiding Officer at each polling division is furnished with the original affidavits made by voters seeking to be put on the list, so that in case of dispute a comparison of handwriting can be made, and before casting his vote the voter must sign his name in a book. When a voter is absent from his proper polling division or his electoral district on the day of the election, he may on making the prescribed affidavit cast his ballot at the point he happens to be. Absentee votes are placed in separate envelopes and in due course dispatched to the Returning Officer of the district where such voter is registered, the declaration of final results being thus technically liable to be delayed until sufficient time has elapsed for all such votes to reach their proper destinations. A report is made by each Returning Officer to the Provincial Secretary, and finally all records and documents sent to him, and after one year they may be destroyed. Recounts may be made before a County Court judge only when a majority is under fifty.

Personation, bribery, riotous conduct, treating, and so forth are all dealt with. All payments on behalf of a candidate must be made through an authorized agent, and within thirty-five days after the result of an election is declared a statement of all election expenses and claims must be forwarded to the Deputy Provincial Secretary by every candidate, and the expenses authorized are set forth in the Act. The expenses of any political party must likewise be returned. Contributions by corporations, etc., can be unlawful. Provision is made for election petitions to unseat and for their trial, and for inquiry by the Legislative Assembly into any charge of corrupt practices.

Finance.—The Government is authorized to borrow, by c. 49, $2,000,000 for purposes of the Land Settlement Act, the Soldiers' Land Act, and the Water Act; by c. 50, $3,000,000 for the purposes of the British Columbia University; by c. 51, $5,000,000 for construction of highways; by c. 52, $4,000,000 to continue the construction and equipment of the Pacific Great Eastern Railway; and by c. 53, $4,800,000 for refunding purposes connected with that railway.

Food.—C. 23 requires every person operating a creamery or dairy to be licensed, provides for inspection, and authorizes the Inspectors to close premises not kept in a proper condition.

Forests.—C. 44 enacts various amendments designed for the protection and development of the timber resources of the Province.

Game.—C. 30 enacts a number of amendments to the existing law for the preservation of game and the regulation of the periods, etc., during which game may be taken. Fur-traders and taxidermists are required to be licensed.

Highways.—C. 32 changes the rule of the road from the English rule to the rule, which prevails almost throughout North America, of driving on the right-hand side of a road, but dates are set for the legislation to come into force. The same Act classifies highways as primary, secondary, and local—that is, main channels of traffic, roads of lesser importance, and mere streets ; and provides for their cost and maintenance by the Government and municipalities in certain proportions.

Insurance.—C. 35 legalizes insurance on the lives of infants within the limits set forth and also by minors over sixteen on their own lives.

Licences.—C. 48 requires every person engaged in the business of selling real estate to be licensed and imposes a small annual fee. Any complaint of wrongful or dishonest dealing on the part of a licensee may be investigated by an Inspector appointed by the Executive Council and a licence may be revoked. An appeal to the Court is provided.

Mines.—C. 59 repeals and re-enacts provisions as to Crown leases of placer mining claims.

Motors.—C. 62 is a revised Act for the regulation and taxation of motor-vehicles. Owners and dealers must register their motors, which must carry a plate showing the licence number. Visitors to the Province are also required to register. Chauffeurs must be licensed, but a minor under seventeen is not allowed to drive a car without the permit specified in the Act. Persons driving any motor-vehicles are to take all reasonable precautions to prevent accidents to horses, to stop when overtaking a street-car, not to exceed a speed limit of fifteen miles per hour in a city, town, or village, or thirty miles elsewhere, and to stop when an accident occurs and give notice of it to the police. The speed limit does not apply to fire departments. Traffic rules relating to weight of loads, etc., must be complied with. Heavy penalties are imposed for violation of the Act, and licences are endorsed after a conviction and may be cancelled. An owner is responsible for violations committed by any person entrusted with his car, and offenders may be arrested without warrant by the police. The Superintendent of Provincial Police administers the Act, and municipal authorities are given certain powers to pass additional by-laws to regulate such traffic. $10 is payable for first registration and an annual fee according to the number of taxation units, the minimum being $15 and a unit calculated by adding the value of the motor-vehicle in dollars to the weight in pounds. A dealer pays a minimum fee of $50.

Municipalities.—C. 63 contains numerous amendments to the Municipal Act. Women and clergymen are given the right to hold office as Mayor, etc. Powers to establish golf-courses, swimming-baths, etc., are conferred and the securities for investment of sinking funds enlarged. The definition of owner for the purposes of qualification to vote on a money by-law is extended to include his heirs, executors, administrators, and assigns, or any agent for the assessed owner. The assessment roll for the previous year may be adopted by the Council, with such alterations as may be necessary, and the minimum tax is fixed at $1. Lands sold at a tax sale prior to 1919 are made irredeemable and titles thereto confirmed. Taxes

may be abated, rebated, etc., in favour of widows or orphans of deceased soldiers, disabled soldiers, etc.

C. 64 empowers the Executive Council on petition to disincorporate a municipal area.

C. 65 provides for incorporation under a simplified system of any village area containing not more than 1,000 residents.

Natural Resources.—C. 58 empowers the Executive Council to place a reserve on lands containing iron-ore and to dispose of same with provision for royalties.

C. 95 establishes a British Columbia Patriotic and Educational Picture Service. The Director provides for the taking and exhibition of the pictures, and has power to enforce his instructions.

Prohibition.—C. 72 makes the law regulating the sale of intoxicating liquor more stringent, and further powers are vested in the Commissioner appointed to administer the Act. Liquor may not be taken from a private dwelling-house except to another such house or from a warehouse except to another warehouse. Druggists authorized to fill medical prescriptions can obtain not more than five gallons in one day and must file with the Commissioner all prescriptions filled by them. Medical prescriptions are limited to eight ounces of whisky or other spirituous liquor, except in special cases sworn to by the physician, and no physician is entitled to fill more than one hundred prescriptions each month. Restrictions are placed on the sale of flavouring extracts or essences containing alcohol. The various police authorities are required to file monthly reports of prosecutions with the Commissioner. Municipalities are given power to regulate and prohibit the sale of "near-beer" and "soft" drinks.

C. 93 provides for a fresh referendum in this form—"Which do you prefer, (1) the present 'Prohibition Act' or (2) an Act to provide for Government control and sale in sealed packages of spirituous and malt liquors?"

Public Utilities.—C. 74 repeals the Act of 1919 establishing a Public Utilities Commission for the control of provincial undertakings such as railways, tramways, telephones, etc.

Railways.—Cc. 39 and 40 provide for the building of short lines by the Kettle Valley Railway Company for the purpose of developing a coal area and an irrigated district.

Returned Soldiers.—C. 4 extends for a further year the protection granted by the legislation of 1918 in regard to mining rights and property. C. 63 permits municipalities to extend relief in regard to taxes. C. 102 protects claims to water rights.

Social Legislation.—C. 61 authorizes the payment of pensions to mothers. The definition of that term includes widows, married women whose husbands are in prison or a lunatic asylum, women whose husbands are unable to support them owing to illness or accident, deserted wives, and other cases considered by the Superintendent charged with administration to be within the Act. Applicants must be indigent and their children under sixteen, qualified as British subjects and resident for at least eighteen months in the Province. The maximum allowance is $42.50 a month where there is one child, and an extra allowance of $7.50 a month for every other child. Allowances cease when a recipient leaves the Province or, if a widow, remarries.

C. 94 is entitled the Testator's Family Maintenance Act and authorizes

the Court to order that when a testator makes no provision for wife, husband, or children the estate may be made liable for payment of a lump sum or periodical sums.

The amounts payable under the Workmen's Compensation Act of 1916 are by C. 105 increased—for example, in case of death the widow will receive $35 a month instead of $20.

Taxation.—C. 89 contains sundry amendments to the Taxation Act. The exemption of income is raised to $1,200 for single persons and $1,500 for married people, with $200 in addition for each dependent, which includes children under eighteen and adult relatives dependent for support on the taxpayer, etc. Income of non-residents from securities of the Province or any municipality in the Province is exempted—also income from motor-vehicles or vessels registered in the Province.

C. 90 amends the Amusements Tax Act of 1917 and c. 91 the Poll-tax Act, giving municipalities power to collect a poll-tax up to $5.

Water Rights.—C. 102 among other amendments abolishes the public irrigation corporation and replaces it by Improvement Districts, which are tracts of land requiring irrigation, the owners of the land becoming a body corporate under Letters Patent for the purpose of storing, supplying etc., water or power. Provisions for the government of the corporation are set forth.

Women.—C. 17 confers on women the right to be elected as members of the Legislative Assembly of the Province, and c. 63 the right to be elected to municipal offices.

4. MANITOBA.

[*Contributed by* J. Pitblado, Esq., K.C., LL.B.]

Public Acts, 159; Private Acts, 17.

A large number of the Public Acts comprise minor amendments of Acts already passed.

1. Act amending Manitoba Election Act (c. 33). This establishes proportional representation in the electoral division of Winnipeg.

2. Electrical Power Transmission Act amended (c. 35) gives the Minister of Public Works power to initiate inquiries in connection with municipalities which have not made any application for electrical service, and further, to construct or acquire transmission lines or any electrical plant in such municipality. The Minister may also distribute and sell electrical power directly to persons in the municipality.

3. The Engineering Profession Act (c. 38) provides for the registration of professional engineers and the incorporation of all such registered engineers. The qualifications for registration are: in respect of residents in the Province at the date of the passing of the Act, one year's practice; in respect of new residents coming from another Province of Canada in which they were duly registered, by the production of a certificate of membership in good standing in such Province. Other persons must either submit to an examination or produce credentials satisfactory to the council of the association entitling them to be admitted. Non-residents of the Province may take out a temporary licence. Non-residents of Canada may take out a licence to practise their profession in an advisory or a consultatory capacity. The Act establishes a Council

of Management and a Board of Commissioners, nominated and appointed annually by the Council of Management. The Council has disciplinary powers of suspending or expelling an engineer from the association; certain penalties are fixed for non-professional conduct or for practising when not registered or not licensed.

4. Act to enable a municipality to borrow money for fodder purposes (c. 43) enables rural municipalities to borrow money not exceeding $50,000 for the purpose of furnishing feed, oats, hay, or potatoes to resident farmers on certain securities.

5. The Good Roads Act amended (c. 47) enables the Minister of Public Works to purchase gravel-pits, machinery, etc., for use in building roads, and to enable the Government to borrow up to five million dollars for good-roads purposes.

6. Act respecting housing in urban municipalities (c. 55) enables the Lieutenant-Governor in Council to raise by way of loan a sum not exceeding one million dollars in any one year, to lend to urban municipalities for the purpose of enabling the municipalities to make advances to persons to erect or repair houses within the municipality.

7. Industrial Conditions Act of 1919 amended (c. 57) regulates the right of employers and employees to organize for any lawful purpose, and right of employers or employees to bargain with one another individually or collectively through their organizations or representatives, provided that in case of dispute as to the method and the manner and terms of such bargaining the dispute shall be submitted to the Joint Council of Industry.

8. Life Insurance Act amended (c. 61) provides that where a policy on the face of it is for the benefit of a person other than the insured's wife or husband, wife or children, or husband and children, or his or her children, then the insured may by an instrument in writing attached to or endorsed on the policy, absolutely revoke the benefit, provided the insured shall not alter or revoke the benefit of any person who is a beneficiary for value.

9. District Hail Insurance Act (c. 62) provides for the organization of rural municipalities into Hail Insurance districts. A Board of nine members, one representative to be appointed by the council of each municipality, to have a corporate existence and power to carry on business of Hail Insurance under the provisions of the Act. The Board has power to strike a rate to be levied upon each crop insured under the Act, and each municipality within the Hail Insurance district is required to pay to the Board the amount of the tax levied.

10. The Legitimation Act (c. 72) provides that the marriage of parents of any child born out of lawful wedlock shall have the effect of making such child legitimate from the time of birth.

11. Provincial Police Act (c. 102) establishes a Commissioner to be the head of the Provincial Police, and, except as provided for in the Act, the Civil Service Act is to apply to members of the Provincial Police Force.

12. The Tax Commission Act (c. 134) establishes a Commission as a branch of the Department of the Municipal Commissioner to be composed of three members with duties and powers, *inter alia*, as follows: To supervise assessment laws of the Province and all assessments; to confer with, advise, and direct assessors; prescribe a uniform system of procedure to be observed by assessors in preparation of assessment rolls; to require assessors and other municipal officials to make returns

to the Commission on subjects affecting assessment and taxation; to examine cases of alleged violation of assessment laws; to call together all assessors to study and consider tax problems; to study and investigate tax laws of other Provinces of Canada and other countries; to act as a Board of Equalization to equalize in a fair and equitable manner the valuation and assessment of property in the several municipalities in each of the judicial districts and as between judicial districts; to consider and report upon for the guidance of the Legislature petitions requesting the formation of new municipalities.

13. The Manitoba Temperance Act (c. 135) amends previous Act and provides that liquor may be sold only by Government-appointed vendors at prices fixed by the Government, and that such vendors shall not make any profit on sales made, and sales may be made only to certain persons as specified in the Act, such as physicians, dentists, hospitals, etc.

14. War Relief Act, 1918, amended (c. 150), extending the protection to soldiers from one year after the determination of the war to May 1, 1921.

15. Winnipeg City Charter, 1918, amended (c. 156) to establish a system of municipal election by proportional representation in the city of Winnipeg.

16. The Workmen's Compensation Act of 1916 re-enacted and consolidated (c. 159). The general principle of this Act is compulsory insurance by employers against accident and death of the employees.

5. NEW BRUNSWICK.

[*Contributed by* The Hon. the Attorney-General.]

1919.

Jury.—C. 3. An Act representing jurors and juries.

This Act is rather a consolidation of the previous legislation, changing, however, the mode of selection of jurors.

All males between twenty-one and sixty-five years of age are liable to service with a few exceptions. They must be British subjects assessed on real or personal property or both to the amount of $600 or on that amount of income. The new feature is the constitution of a Jury Board composed of the County Court Judge, the County Treasurer, and the Sheriff for each county. Such Board determines the number of jurors required for the circuit and county courts in their county both as Crown and Petit jurors and fixes the number to be placed upon the list at three times the number probably required. The Board selects a list from the jury list, putting upon it such men as in its opinion are the "most discreet and competent for the performance of the duties of jurors." The Sheriff then transcribes the list in alphabetical order and numbers the names in rotation. At least fifteen days before any Circuit or County Court is to be held the Jury Board assemble and the judge of the County Court draws a sufficient number from the list by numbered ballots corresponding to the numbers against the names. Those so drawn are notified that they will be required to serve at the ensuing courts. The Board may draw all panels required for the next three months at the same time, but the names may not be disclosed to anyone except members of the Board and the Crown Prosecutor until six days before the holding of the Court for which such jury panel has been drawn.

Sale of Goods.—C. 4. Sale of Goods Act is an exact reproduction of the Imperial Act 56 and 57 Vict. c. 71.

Factors.—C. 5. The Factors' Act is a reproduction of the Imperial Factors' Act, 1889.

Railways.—C. 17, relating to Provincial Railways, provides that tolls levied by any provincial railway shall be subject to revision, alteration, and amendment by the Lieutenant-Governor in Council or by the Board of Railway Commissioners of Canada if the Lieutenant-Governor in Council shall so order. A provincial railway exacting any toll not so authorized is liable to a penalty. A provincial railway cannot make or amend a toll unless approved by the Lieutenant-Governor in Council or the Board of Railway Commissioners of Canada if referred to them.

A duty is imposed on such company to furnish proper safe and adequate service for the public upon order of the Lieutenant-Governor in Council made upon a report of the Minister of Public Works.

The Lieutenant-Governor in Council may also order reconstruction or repair of any part of the railway, and failure to comply subjects the company to a daily penalty.

A regular daily service is also provided for under a penalty for failure to afford the same without an excuse satisfactory to the Lieutenant-Governor in Council. In case the railway fails to make the reconstruction or repair required, the work may be done by the Province, and the cost is made a first lien on the railway and other property of the defaulting company.

Lands and Mines.—C. 23 enables the Minister of Lands and Mines to select a tract of wilderness land not exceeding 400 sq. miles as a refuge for game animals and birds.

Evidence.—C. 43 deals with evidence, and provides that the production of a certificate in writing, signed by the officer in charge of estates of the Canadian overseas expeditionary forces or by the director or other head of the record office at the Military Headquarters, Ottawa, or by the officer designated by the Lieutenant-Governor in Council for that purpose, stating that the person named in the certificate was a member of the Canadian expeditionary forces and died while overseas and that he has been officially reported dead, shall be sufficient evidence of the death of said person for any purpose to which the legislative authority of the Province extends.

No official proof of the signature to such certificate is required.

Intoxicating Liquors.—C. 53 provides for the appointment of a Board by means of which the Lieutenant-Governor in Council may take over the business of wholesale vendors of liquor in the Province.

Housing.—C. 54, an Act to provide for better housing, deals with money to be loaned by the Government of Canada to the Province for this purpose. Any city council, town council, or municipal council may adopt the Act upon which such local authority may borrow from the Province for the purpose of carrying out a town-planning scheme or housing scheme or both. Such local authority issues bonds, debentures, certificates of indebtedness, or other security for moneys borrowed under the Act and may loan to any individual or housing company not exceeding 85 per cent. of the cost of the houses and the land upon which they are constructed. The Lieutenant-Governor in Council has power to make regulations for the carrying out of the Act, including provisions for expropriation.

Public Utilities.—C. 61 extends the jurisdiction of the Board of Commissioners of Public Utilities to natural gas.

Women Suffrage.—C. 63 confers the Provincial Franchise upon women.

6. PROVINCE OF ONTARIO.

[*Contributed by* JOHN DELATRE FALCONBRIDGE, ESQ., K.C.]

Acts passed—167: Public—109; Private—58.

The session held in the spring of 1920 was the first session of the fifteenth legislature of Ontario. As the result of the provincial general election the Conservatives and Liberals together composed one-half the House, and the other half consisted of representatives of the United Farmers of Ontario reinforced by a very small group of Labour representatives. The House contained a large number of new and inexperienced members, and the session was unusually long. The Farmer-Labour Government had practically no majority, but no effort was made by the two old parties to force the Government to appeal to the people.

Election Laws.—C. 2 is the Election Laws Amendment Act, 1920. In each county an Election Board is constituted, consisting of the county judge or judges and other county officials. This Board appoints revising officers for the revision of the lists of voters prepared in the first instance by the clerks of the various municipalities. The selection of polling places is left to the municipal authorities, subject to the approval of the Election Board. The appointment of enumerators for unorganized territory, the naming of places for which lists are to be prepared, and the arrangements for hearing appeals are vested in the Election Board. The qualification of voters is simplified and is made uniform as to the period of previous residence required; provision is made for enabling persons to be entered on the list who in the ordinary course of their business have moved from one electoral district to another within the period of residence required in ordinary cases, and other changes are made in the election law.

Legislative Assembly.—C. 2 is the Legislative Assembly Amendment Act, 1920. Heretofore, under the two-party system, a sessional indemnity of $5,000 had been paid to the Leader of the Opposition, in addition to the ordinary sessional indemnity; but this arrangement seemed no longer just or practicable when the Opposition was divided into two substantially equal groups. For the year ending October 31, 1920, it is enacted that the sum of $5,000 be divided between the Opposition Leaders, and for the future it is enacted that the sum of $1,500 be paid to each member recognized by the Speaker as Leader of an Opposition group of fifteen or more members in the Legislative Assembly.

Public Service Superannuation.—A fund is established (c. 3), composed of equal contributions by the Government and by the civil servants, the amounts ranging from 2½ per cent. to 5 per cent. of the salary, according to the age of the civil servant at the time of entering the service or at the commencement of the Act. Retirement is made compulsory (subject to certain exceptions) at the age of seventy years and optional on the part of the civil servant at the age of sixty-five. The retiring allowance is fixed at one-fiftieth of the salary multiplied by the number of years of service, not exceeding thirty, and is limited in amount to

$2,000 per annum. In case of the death of the civil servant, before or after superannuation, one-half of the retiring allowance is to be paid to the widow and to children under eighteen years of age.

Financial Measures.—The scale of duties under the Succession Duty Act is considerably increased (c 8). The taxes payable by insurance companies and banks, and the stamp tax on the transfer of securities, are increased (c. 9). There is a great increase in the tax on race-track meetings—from the sum of $1,250 for each day of a race meeting to $7,500 a day (c. 9). Race meetings are also subject to an amusement tax, generally not less than 25 cents on each admission. The Amusements Tax Act is also amended so as to bring within its operation hotels, restaurants, and dining-rooms in which dancing of a public character is part of the entertainment (c. 11).

Mining.—For about thirty years there has been a Bureau of Mines, a sub-department of the Ministry of Lands, Forests, and Mines. Provision is now made for separate departments, one of Mines, the other of Lands and Forests, under separate ministers (c. 12). There are also some amendments to the Mining Act in other respects, including a provision for the free assay of samples of gold, silver, copper, lead, metallic iron, tin, or tungsten by the Provincial Assayer at Toronto (c. 13).

Export of Pulp Wood.—Power is conferred on the Government to suspend the operation of what is known as the " manufacturing condition " (that is, the statutory condition attached to all timber licences and pulpwood concessions requiring the manufacture of the product in Canada), when, owing to the lack of labour, capital, or satisfactory markets, or the increase in fire risk, it seems advisable that the pulp-wood should be removed (c. 14).

Railway Extension.—Authority is given to the Government to extend the Temiskaming and Northern Ontario Railway from its present terminus at Cochrane (the point of junction with the Grand Trunk Pacific Railway) to James Bay—the southern projection of Hudson Bay (c. 17). Apart from the preliminary work, action under this statute will, however, depend upon appropriations to be made in the future by the Legislative Assembly.

Hydro-electric Power.—Among other amendments of the Power Commission Act is one enabling township municipalities to enter into contracts with the Hydro-electric Power Commission for the establishment of distributing stations, to be operated by the Commission—the cost to be provided for by the rates charged to customers (c. 18). More effective provision is also made for preventing power companies from using more water at Niagara Falls or developing more power than may be authorized by their franchises (c. 19). This is a matter of public importance in view of the fact that the amount of water to be used on each side of the river is limited by the International Waterways Treaty. The construction of the Chippewa-Queenstown power canal and the increased demands for power make it necessary to conserve as far as possible the available supply of water.

Highways.—Provision is made for the expenditure of $3,000,000 per annum for five years on highway improvement (c. 20), and other amendments are made in the statutes relating to highways (cc. 21–5).

Agriculture.—Provision is made for Government loans to co-operative marketing associations (c. 54), and for the testing of cream and milk purchased for sale, shipment, or manufacture (c. 85).

Returned Soldiers.—The powers of the Soldiers' Aid Commission are

extended, and, in particular, the Commission is authorized to continue the work already begun by it of establishing shelters or houses for the children of soldiers (c. 29).

Courts.—A Bill designed to abolish appeals from any Ontario Court to the Privy Council was introduced by the Attorney-General. Subsequently it was withdrawn in order that there might be opportunity for fuller discussion, on the understanding that it would be introduced again at a later session.

By consent of the parties an action beyond the ordinary jurisdiction of the County Court may be tried in that Court. The County Courts Act is amended by authorizing the judge to " award all costs of or incidental to such action on the scale of the Supreme Court in the same manner as if such action had been tried or disposed of in the Supreme Court " (c. 32).

The Surrogate Courts Act is amended by the provision that the fees payable to the Crown shall be calculated upon the value of the whole estate, including the real estate as well as the personal estate. The judge is empowered to employ skilled assistants in investigating and auditing intricate accounts. In order to prevent the evasion of the Succession Duty Act, it is provided that probate or letters of administration shall not issue until the judge is satisfied that there has been no undervaluation and has made inquiries as to the dealings with the estate prior to the death of the testator or intestate (c. 33).

The jurisdiction of the Division Courts is doubled—with, however, a right of appeal which does not exist in the case of smaller claims. As a result of the amendment the Division Court now has jurisdiction up to $120 in " personal actions," up to $200 in an " action on a claim or demand of debt, account, or breach of contract, or covenant, or money demand . . . provided that in the case of an unsettled account the whole account does not exceed $1,000." The jurisdiction with regard to other kinds of claims is increased in the same proportion.

Sale of Goods.—Upon the recommendation of the Conference of Commissions on Uniformity of Legislation in Canada, the Sale of Goods Act, 1893, was adopted in New Brunswick and Prince Edward Island in 1919, and in Ontario in 1920 (c. 40). The Ontario statute differs from the original statutes in that s. 24 of the original statute is omitted, and s. 22 of the original statute, relating to market overt, has been replaced by s. 24 of the Ontario statute : " The law relating to market overt shall not apply to any sale of goods which takes place in Ontario." Subject to slight local modifications the Sale of Goods Act is now in force in all the provinces except Quebec.

Partnership.—The Partnership Act, 1890, was adopted in 1920 in New Brunswick, Prince Edward Island, and Ontario (c. 41)—upon the recommendation of the Conference of Commissioners on Uniformity of Legislation in Canada. It is now in force in all the provinces except Quebec.

Labour and Wages.—The amount to which wages are exempt from attachment is increased (c. 42), and numerous amendments are made to the Workmen's Compensation Act (c. 43). The Minimum Wage Act (c. 87) provides for a commission to determine and establish a minimum wage for female employees in any particular branch of business.

Social Legislation.—The Deserted Wives' Maintenance Act, which provides for a weekly allowance to be paid by the husband to the wife

under an order made by a magistrate, is amended by increasing the amount from $10 to $20 a week (c. 44). The Mothers' Allowances Act provides for the payment of an allowance to widows, or the wives of inmates of the hospitals for the insane or of permanently disabled men. The person receiving an allowance must be the mother of at least two children under fourteen years of age and they must be living with her. She must be resident in Ontario and a British subject. The Act is to be administered by a provincial commission and local boards. If in the opinion of the local board the mother is a proper person to have the care and custody of children, and has not adequate means to care for them without assistance, an allowance may be made to her—one-half the amount being paid by the municipality and one-half by the Province (c. 89).

Surveys.—The Surveys Act, 1920, is a technical statute, comprising the result of a careful revision and consolidation of the former statutes on the subject (c. 48).

Assessment.—Exemption from taxation of income from personal earnings is increased, in the case of householders or heads of families, from $1,700 to $2,000 in cities and towns and from $1,400 to $1,700 in other municipalities. In the case of other persons, the exemption is increased from $700 to $1,000 in cities and towns, and from $500 to $800 in other municipalities. A further exemption of $200 for each dependent child under eighteen years of age is provided for (c. 63).

Public Libraries.—The revised Public Libraries Act provides additional and more elastic facilities for the establishment of free public libraries. It also authorizes every municipal council to levy and assess a special rate for public library purposes sufficient to produce an amount not exceeding 50 cents *per capita* of the inhabitants of the municipality —subject to increase in certain special cases. This limitation, based upon population, is substituted for the former limitation, which was based upon the amount of total assessments for taxation purposes (c. 69).

"Temperance" Legislation.—The Dominion Parliament in 1919 adopted an amendment to the Canada Temperance Act, providing that in any province "in which there is at the time in force a law prohibiting the sale of intoxicating liquor for beverage purposes" its Legislative Assembly might request that a vote of the electors in all the electoral districts of the province should be taken for or against the following prohibition: 'That the importation and the bringing of intoxicating liquors into such province may be forbidden.'" In the event of the majority of the votes being in favour of the prohibition, provision was made for the bringing of the prohibition into force in the province by Dominion Order in Council. The Province of Ontario having been, since the passing of the Ontario Temperance Act, 1916, a province in which the sale of intoxicating liquor for beverage purposes (other than native wines) has been forbidden, the Legislative Assembly in 1920 adopted the necessary resolution under the Canada Temperance Act, and, in anticipation of a vote favourable to the prohibition of importation, also passed the Liquor Transportation Act, 1920 (c. 80), with the intention of supplementing the Canada Temperance Act by making it an offence to transport liquor from one place in Ontario to another, or to deliver liquor or receive delivery in Ontario for sale or consumption, subject always to the exception in favour of native wines. The particular practice against which the Liquor Transportation Act was aimed was that known as "short circuiting"—that is, the sending of orders from Ontario to (say) Montreal,

and thence returned to breweries and distilleries in Ontario to be filled in Ontario. The vote in Ontario took place in 1921, and the oppressive system under which the inhabitants of that Province live was completed by a Dominion proclamation bringing into force the prohibition of importation. The Legislative Assembly in 1920 also made a number of amendments to the Ontario Temperance Act with a view of "strengthening" its provisions and assisting in its administration and enforcement (c. 78).

Education.—Besides the revision and consolidation of the Public Schools Act and amending Acts, numerous other changes are made in the school laws (cc. 99–104). An annual sum of $6,000 is to be awarded by the Minister of Education in the form of scholarships to residents of Ontario for the purpose of enabling them to pursue courses of study in France (c. 103).

7. PRINCE EDWARD ISLAND.

[*Contributed by* W. E. BENTLEY, ESQ., K.C.]

Fifty-six Acts were passed during the year 1920, of which twenty-one were public in character, Most of the public Acts deal with local matters, such as taxation, public schools, improvement of highways, agriculture, domestic animals, horse-breeding, and the inspection of bees.

Partnership.—For the purpose of promoting uniformity of legislation, the Partnership Act, 1890, as enacted in England, was adopted, with some necessary modifications. This statute is now in force in all the Provinces of Canada except Quebec. In the last-mentioned Province the general law of partnership is governed by Articles 1830–70 and 1892–1900 of the Civil Code of Lower Canada.

Factors.—The Factors Act, 1889, enacted by the British Parliament, was adopted. This statute has been adopted by all the provinces of Canada except Manitoba and Quebec. In Quebec, Articles 1735–54 of the Civil Code of Lower Canada are based upon the former British legislation, superseded in the United Kingdom by the Factors Act of 1889.

Legitimation.—C. 12 enacts as follows:

If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry, such child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

Nothing in this Act shall affect any right, title, or interest in or to property, if such right, title, or interest has vested in any person:

(*a*) Prior to the passing of this Act in the case of any such intermarriage which has heretofore taken place, or

(*b*) Prior to such intermarriage in the case of any such intermarriage which hereafter takes place.

8. QUEBEC.

[*Contributed by the* HON. MR. JUSTICE FABRE SURVEYER.]

Acts passed—166: Public—84; Private—82.

Annex to Montreal Court House.—It must not cost, including the acquisition of the land, more than $2,000,000. The land acquired, if not purchased amicably, shall be expropriated under the Quebec Railway Act, but the sole arbitrator shall be the Quebec Public Service Commission (c. 4).

Montreal University Grant.—A sum of not more than $1,000,000 payable by annual instalments of $200,000 each, may be paid to aid in the establishment of a university at Montreal (c. 8).

Post-graduate Courses in Paris.—Five annual scholarships of $1,200 each may be granted for the purpose of helping students to follow post-graduate courses in Paris, France, the conditions of such scholarships to be published in the Quebec *Official Gazette* (c. 9).

Standard Time.—In that part of the Province which lies east of the meridian of sixty-eight degrees west longitude, it is reckoned as four hours behind Greenwich time; in that part of the Province which lies west of such meridian, five hours (c. 11).

Quebec Public Service Commission (c. 21).—It replaces the Quebec Public Utilities Commission dealt with in s. 3 of c. 3 of Title 4 of the Revised Statutes, 1909. It consists of three members, appointed by the Cabinet for ten years, but removable for cause. No commissioner can hold any office or carry on any employment inconsistent with his duties, nor hold any stock or security in any public service, nor have any interest in any device which may be used for the purpose of any public service. The President of the Commission must give his attention exclusively to his duties as such, and follow no other occupation. The Secretary of the Commission holds office during pleasure.

The jurisdiction of the Commission extends to all matters within the jurisdiction of the Railway Committee of the Executive Council; to all questions relating to the transportation of goods on the lines of any tramway company; to all matters within the jurisdiction of the Minister of Public Works and Labour, to whom it is substituted, and mentioned in ss. 6592 to 6596 of the Revised Statutes; to contestations regarding tolls of public services; to disputes between public services and municipalities with regard to the use of railways or watercourses by the former, or to the placing of rails on public roads, or to the extension of services; to all questions of municipal administration referred to it by the Cabinet; to all contestations as to the right of floating timber on rivers, lakes, or streams; to expropriations for municipal purposes, in the cities of Quebec and Montreal.

The commissioners may summon, swear, and hear witnesses and experts, inspect properties under the control of any public service, and require the production of documents. If a public service disobeys the orders of the Commission it may send a certificate of such disobedience to the Attorney-General, who, after the publication of a public notice thereof in the Quebec *Official Gazette*, may take action to dissolve the public service or to annul the letters patent incorporating it.

An appeal lies to the Court of King's Bench (appeal side) from any final decision of the Commission upon any question as to its jurisdiction or upon any question of law, except on expropriation matters; but such appeal can be taken only by permission of a judge of that Court given upon petition presented to him within fifteen days from the decision (c. 21).

Taxes upon Non-commercial Corporations.—By c. 24 the provision of the Revised Statutes regarding taxes upon commercial firms, partnerships, or corporations are extended to those which are not commercial.

Montreal University.—The Montreal Branch of Laval University becomes a distinct corporation, comprising faculties of theology, law, medicine, philosophy, letters, sciences, veterinary medicine, dentistry, and pharmacy, which are merged (c. 38).

Venereal Diseases.—A committee of three members of the Superior Board of Health is entrusted with the adoption of all useful measures respecting the treatment of venereal diseases (c. 58).

Students at Law who have been on Active Service.—Those who, admitted to the study of law in January 1920, or prior thereto, have been on active military or naval service during the war, may be admitted with only two years of clerkship if they have otherwise complied with the requirements of the Council of the Bar, and take the Bar examination not later than July 1923 (c. 63).

Companies Act (c. 72).—The Act is divided into three parts: I. Companies incorporated by letters patent. II. Companies incorporated by an Act of the Legislature. III. Corporations or associations having no share capital, incorporated by letters patent.

Part I does not apply to railway, insurance, or trust companies. Publication of the letters patent in newspapers is no longer required. Letters patent may authorize the issue of shares without nominal or par value. Such authorization, however, is subject to restrictions to ensure that shareholders and third parties who have business dealings with such companies are sufficiently protected. Companies may amalgamate by complying with certain formalities. A company which has achieved its object may obtain a cancellation of its charter without winding-up proceedings. Notice of the head office of a company, or of any change therein, must be published in the *Official Gazette*. A creditor of the company, before proceeding against an individual shareholder who has not paid his calls, must apply to the company, which, to avoid liquidation, shall call in the instalments necessary to satisfy the creditor's claim. Companies may purchase their own preferred stock. Preferred stock certificates must contain full information as to the right of preferred stockholders. The letters patent may authorize a company to issue share warrants, or certificates to bearer transferable by delivery which may be accompanied by coupons representing future dividends. The bearer of a share warrant may, upon surrendering his certificate, be registered as a shareholder. Reduction of a company's capital must be approved by the Provincial Secretary, if a creditor objects thereto. Bondholders are entitled, on payment of a small sum, to obtain copies of the trust deed. Directors are authorized to distribute unissued stock in lieu of dividends, when there are profits, or to credit shareholders on unpaid balances due on their shares. Profits may be utilized as additional capital. The assets of a company which has achieved its object may be distributed among its shareholders, after publication of a notice in the *Official Gazette*. In the absence of any date fixed in the letters or by-laws, annual meetings shall take place on the fourth Wednesday of January, or, should same be a *dies non*, on the next juridical day. A detailed balance-sheet, not more than four months old, must be laid before the shareholders at every such meeting. A register of mortgages and charges must be kept, and remain open for inspection, during business hours. If a shareholder has reason to believe that it is in the common interest that an inspection be had, the Provincial Secretary may, upon application, order such inspection, the costs of which shall be borne by the applicants, unless the Provincial Secretary directs the same to be paid by the company. The appointment of auditors, whose powers and duties are fully stated, is obligatory. In addition the company is bound to forward every year, to the Provincial Secretary, a statement giving a summary of its affairs.

One duplicate is returned for examination by shareholders and bondholders.

Part II requires no comment. It contains provisions similar to those of Part I, except as regards such changes as can be made by companies incorporated by letters patent.

Part III allows the incorporation by letters patent of persons seeking objects of a national, patriotic, religious, philanthropic, charitable, scientific, and the like character, but without pecuniary gain. Part I of the Act, except the incompatible sections thereof, applies, *mutatis mutandis*, to such companies, regarding which there are also a few special provisions.

Protestant Cemeteries.—If such a cemetery has fallen into a dilapidated and discreditable condition, an Order in Council may appoint persons, not less than five in number, for the purpose of assuming the control, maintenance, and management thereof, but without interfering with the ownership of it (c. 73).

Authorization of Married Women.—A wife separated from bed and board may now alienate her real estate with the authorization of a judge, after having served a notice of such application upon her husband, at his last known address (c. 78).

Organization of the Civil Courts (c. 79), assented to February 14, 1920, came into force by proclamation July 24, 1920. It does not materially differ, except in phraseology, from c. 76 of the statute of 1919, which it repeals, and which was summarized in the preceding volume.

Disorderly Houses.—The use of any building for disorderly purposes may be stopped by injunction. The judge may close such building for a period of not more than a year. The operation of such judgment may be suspended upon a bond being given, which bond may be forfeited if the building is misused. Leases for disorderly purposes are null and void. This statute has been declared constitutional by the Court of Appeals (c. 81).

9. SASKATCHEWAN.

[*Contributed by* R. W. Shannon, Esq., K.C.]

Acts passed: Public—79; Private—10.

Revised Statutes.—The Commission appointed in 1917 to revise and consolidate the statutes completed its labours in October 1920, and the revision and consolidation, intituled, "The Revised Statutes of Saskatchewan, 1920," was brought into force on November 10 by an Act assented to on that date. The statutes, which have been arranged in appropriate groups, number 213 chapters running to 2,852 pages, and are contained in three volumes. In an appendix, published as a separate volume for the sake of convenience, are found certain constitutional and other Acts affecting the Province (Schedule I.), while Schedules II., III., and IV. show respectively (1) the history and disposal of Acts; (2) the Acts and parts of Acts repealed from the coming into force of the Revised Statutes; and (3) the Acts and parts of Acts omitted from the consolidation but remaining unrepealed.

The 1920 session produced the smallest bulk of current legislation for many years, but some important amendments were enacted.

Elections.—The provisions of the Saskatchewan Election Act relating

to the procedure to be followed in making and revising lists of voters for electoral divisions and parts of electoral divisions included within the limits of any city or any town having a population of at least 2,000 were repealed (No. 14). Under this procedure registrars were appointed annually, if necessary, for each of these divisions and portions of divisions. The registrars divided their divisions into polling subdivisions and appointed deputy registrars to act for one or more subdivisions. Registration sittings were held by the deputies for the purpose of receiving applications for registration of voters, and lists of applications were prepared, published, transmitted to the Clerk of the Executive Council, and printed. A judge of the District Court acted as revising officer for one or more electoral divisions and appointed a time and place for holding a Court of Revision. Complaints were heard and lists were revised by the judge, and the completed lists sent to the Clerk of the Executive Council and printed.

The procedure laid down for the preparation of voters' lists for electoral divisions and portions of electoral divisions not included in those before described is simpler and, in consequence of the above amendment to the Act, now applies to all electoral divisions. Briefly it is as follows: The returning officer, upon receipt of a writ of election, subdivides the division into polling subdivisions. Failing appointment by the Lieutenant-Governor in Council, the returning officer appoints enumerators to prepare lists of voters for one or more polling subdivisions. The lists are prepared and published, and a time and place are fixed by the enumerator for hearing complaints. The lists are then revised, corrected, and certified by the enumerator and delivered before polling commences to the deputy returning officer for the appropriate polling subdivision.

Succession Duty.—No succession duty is now leviable on moneys received or receivable under a contract of insurance effected by the deceased on his life if such moneys are payable to his father, mother, husband, wife, child, daughter-in-law, or son-in-law, and the aggregate amount of such moneys does not exceed $5,000 (No. 22).

King's Bench.—An amendment to the King's Bench Act (No. 25) provides that no action shall be brought in Saskatchewan for damages in respect of a tort committed outside the Province, except by special leave of the Court or a judge.

Evidence.—No. 28 amends the Saskatchewan Evidence Act by the insertion of a subsection providing that, notwithstanding the provisions of any statute imposing penalties, whenever in any action or proceeding the evidence of the defendant, or of the husband or wife of the defendant, is taken at the instance of the adverse party, no sentence of imprisonment, other than such as may be imposed for default in payment of a fine or penalty or for non-compliance with an order, shall be pronounced.

It will be noticed that this enactment does not go so far as s. 3 of Lord Brougham's Act, which provides that nothing therein contained shall render any person charged with an offence punishable on summary conviction a compellable witness against himself.

Fatal Accidents.—A revision and consolidation of the Fatal Accidents Act is enacted in No. 29. The original Act, which embodied the provisions of Lord Campbell's Act, 9 and 10 Vict. c. 93, did not contain the amendment to the latter Act, passed in 1864, covering cases in which the deceased leaves no executor or administrator and cases in which an executor or administrator fails to commence proceedings within six months after

the death. The Act as revised provides for these contingencies. Another new section enacts that where any of the beneficiaries are infants and where in such case the executor has agreed on a settlement of a claim or action, either the executor or the defendant may, on ten days' notice to the opposite party and to the Official Guardian, apply to a judge of the Court of King's Bench sitting in chambers for an order confirming the settlement, and that, if the settlement is so confirmed, the defendant shall be discharged from all further claims.

Land Titles.—An amendment to the Land Titles Act provides for payment into Court of mortgage moneys in the absence of a mortgagee. In this case these moneys were formerly paid to the Provincial Treasurer. Another amendment, made in consequence of the Dominion Bankruptcy Act, sets forth the procedure by which a trustee in bankruptcy may apply to be registered as owner of any land, mortgage, or incumbrance belonging to the bankrupt. By a further amendment an owner of land, against which an execution has been filed in error, the execution debtor being a person of the same name as himself, may have the execution removed by simple notice in writing to the registrar stating that the person giving the notice is not the execution debtor. Errors of this kind are due to the fact that the execution creditor is not required to specify the lands to be made subject to the writ. On receipt of the notice the registrar notifies the execution creditor that the execution shall not affect the land referred to in the notice after the expiration of twenty days unless in the meantime the creditor files with the registrar a judge's order continuing the execution in effect beyond that period. Formerly the owner of land had to file with the registrar an affidavit stating that he was not the execution debtor (No. 30).

Homesteads.—S. 7 of the Homesteads Act empowers the wife of a homesteader to file a caveat to protect her rights in the homestead. By No. 31 it is provided that, where the wife has not filed a caveat, a trustee in bankruptcy, acting in good faith, who proceeds to sell the lands, shall not be liable in damages at the suit of the wife if it subsequently appears that the land sold was land in which she possessed homestead rights.

Companies.—No. 33 inserts a new section in the Companies Act providing that, where the name of a company has been struck off the register and, at the expiration of one year from the date of removal, the name has not been restored and no application for restoration is pending, the registrar may allow another company to be incorporated with the same name or to adopt it.

Vehicles.—No. 68 inserts a new section in the Vehicles Act providing that on convicting a person of driving a motor-vehicle while intoxicated, a magistrate may, in addition to any other penalty, prohibit the offender from driving a motor-vehicle for a period not exceeding one year, and may also order that the vehicle be impounded for a period not exceeding one month.

Temperance.—There are numerous amendments to the Saskatchewan Temperance Act (No. 70). The Liquor Commission is given entire administration of the Act. Small defects in the principal Act are remedied and fresh provisions are added for its better enforcement.

Mechanics' Liens.—No claim for a mechanics' lien can now be registered where the amount claimed as due, or the aggregate of the amounts claimed as due by a number of persons with united claims, does not exceed $50 (No. 72).

Workmen's Compensation.—By No. 73 the Saskatchewan Government is brought within the scope of the Act; a "workman" employed otherwise than by manual labour is entitled to the benefits of the Act if his annual remuneration does not exceed $2,000 (formerly $1,800); and the maximum amount of compensation recoverable has been raised from $2,000 to $2,500.

10. NEWFOUNDLAND.

[*Contributed by* THE HON. THE MINISTER OF JUSTICE.]

Co-operative Building Association—C. 5 is "An Act respecting the Dominion Co-operative Building Association, Limited." This Act confers certain privileges upon the Dominion Co-operative Building Association, a company incorporated to relieve the housing situation in St. John's. The Government guarantees 5 per cent. on the paid-up capital of the company for twenty years from January 1, 1920; also gives the company free entry for all construction and building materials and machinery for twenty years from January 1, 1920. The Government has the right to nominate one-third of the directors of the company.

Statute Law Revision.—C. 16 is "An Act respecting the Effect and Application of certain Acts subsequent to the Consolidated Statutes of Newfoundland (Third Series)." The Statute Laws of the Colony having been consolidated up to and including 1916, it became necessary to provide for the application of legislation passed subsequent to the second session of 1916, which repealed, amended, or had reference to the laws so consolidated. This enactment was passed so that all such appeals, amendments, and references should be held to apply to the provisions of the Consolidated Statutes (Third Series).

Agriculture.—C. 19 is "An Act to amend Section 9 of Chapter 139 of the Consolidated Statutes of Newfoundland (Third Series), entitled, 'Of the Encouragement of Agriculture.'" An amendment enabling the Minister of Agriculture and Mines to spend thirty thousand dollars annually in connection with an Experimental Station and Model Farm.

Dogs.—C. 23 is "An Act to amend Chapter 143 of the Consolidated Statutes of Newfoundland (Third Series), entitled, 'Of the Keeping of Dogs.'" This amendment of the Keeping of Dogs Act makes it unlawful for any person but a police constable to kill any dog. Shepherd dogs when properly trained and so certified by the Department of Agriculture and Mines may be kept in any area in which the keeping of dogs is prohibited.

Fisheries.—C. 25 is "An Act to regulate the Exportation of Salt Codfish." This Act provides for the creation of a Codfish Exportation Board, made up of the Minister of Marine and Fisheries as chairman and of six licensed exporters of codfish, four of these being appointed by the Governor in Council and two by the Exporters of codfish. Three constitute a quorum. The duties of the Board are to advise the Governor in Council as to the exportation and marketing, and particularly to recommend regulations regarding licences, conditions and terms of sale abroad, prices, maximum quantities which may be exported. Such regulations when approved by the Governor in Council and published in *Gazette* have the force of law. Exportation is prohibited except under licence, for which a fee of fifty dollars is fixed and ten cents per quintal export tax. The licence shall be in force for a year and may be suspended

or cancelled by the Governor in Council for cause. The Minister of Marine and Fisheries has to convene in September of each year a meeting of codfish exporters to discuss with the Board all matters relating to the exportation of codfish for the ensuing season. S. 7 confers on the Governor in Council the power of appointing Trade Commissioners, and on the Minister of Marine and Fisheries the power to authorize research work in connection with the Colony's fisheries. The penalty for shipping or attempting to ship codfish in contravention of the rules made under the Act is the value of such codfish including export duty. C. 26 is "An Act to provide for the better obtaining of Information respecting the Codfishery." This enactment throws on the master or owner of every vessel engaged in codfishing on arrival at any port in the Colony from the Codfishery the duty of reporting to the Department of Marine and Fisheries the quantity of quintals of fish on board such vessel, giving description of fish and into what qualities it is intended to be cured under a penalty of not less than ten and not more than one hundred dollars. Licensed exporters of codfish shall report to the Minister of Marine and Fisheries monthly the quantity and quality held in store, verified by affidavit, under a penalty of one thousand dollars. The Minister cannot publish this information so required in detail, but the sum-total shall be given to the President of the Board of Trade for the use of the trade. A penalty is provided for publishing false information or statistics respecting the quantity of codfish caught or held in store. Provision is made for appeal to the Supreme Court. C. 27 is "An Act to provide for the Standardization of Codfish." The object of this Act is to improve the methods of curing codfish. Power is conferred on the Governor in Council to appoint a Commission of not less than five and not more than eleven persons, the Minister of Marine and Fisheries being one, and *ex-officio* chairman. The duties cast on the Commission are to submit regulations to the Governor in Council for the improvement of the manner in which codfish is prepared for market, from the catching of the fish to the production of the finished article; the establishment of grades, inspection, marking of packages, lading in vessels, carriage, the establishing of standards, fixing of prices between different qualities, and fixing of penaltics for breach of any of the regulations. All rules under the Act after approval by the Governor in Council and fifteen days after publication in *Gazette* have the force of law.

Seal Fishery.—C. 28 is "An Act to amend Chapter 162 of the Consolidated Statutes of Newfoundland (Third Series), entitled, 'Of the Prosecution of the Seal Fishery.'" An amendment of the Prosecution of the Seal Fishery Act to ensure the better carrying out of the provisions of that Act respecting the sufficiency, quality, and quantity of food supplied the crews and the cleanliness of sleeping-quarters. The enforcement of the provisions of the Act are entrusted to an inspector appointed annually by the Governor in Council for each steamer prosecuting the Seal Fishery. The Public Health Officer is given power to make rules governing the proper care and maintenance of the sleeping-quarters of the crews. S. 3. prohibits the killing of seals after April 20 in any year.

Beavers.—C. 30 is "An Act respecting the Preservation of Beavers." Beavers having been closely protected for several years, they increased and multiplied so rapidly in some localities as to cause serious damage

by flooding. This Act was passed to confer on the Governor in Council by proclamation the power of creating areas in which the killing of beavers shall or shall not be lawful, and to make regulations regarding the hunting, killing, etc., and close seasons. No beavers are allowed to be killed except under licence issued by the Minister of Marine and Fisheries to *bona fide* trappers. Only the Department of Marine and Fisheries may deal in or export beaver-skins. The profits arising from the sale and exportation are to be appropriated to a fund to be named the "State Insurance Fund." The Governor in Council is given power to affix penalties for breaches of the Act where none provided.

Education.—C. 35 is "An Act to amend 'The Education Act.'" This Act creates a Department of Education to be presided over by a Minister appointed by the Governor in Council under the Great Seal. The Governor in Council may also appoint a Deputy Head, and such other officers as are required for the conduct of the business of the Department. S. 3 confers on the Governor in Council power to establish a Normal School, to appoint a Principal of said school, to fix the salaries of the officials of the Department and the staff of the Normal School, and to order an annual census of children between the ages of six and fourteen.

S. 4 defines the powers of the Minister.

S. 6 defines the duties of the different superintendents.

A Board to be known as "The Advisory Board" of the Department of Education is to be constituted, consisting of twelve members, six of whom shall be appointed by the Governor in Council from the six leading denominations, three by the Teachers' Association, and the three Superintendents of Education are to be members of the Board *ex officio*. The members hold office for three years, but are eligible for reappointment or re-election. S. 13 defines the powers of the Advisory Board.

S. 15 deals with the establishment of the Colleges which are already in existence.

S. 16 deals with the appointment of a Board of Directors for Roman Catholics for male and female colleges.

S. 60 of the Education Act, 1916, dealing with the appointment of Superintendents, is amended by S. 18 of this Act, so that there may be but one Superintendent for Roman Catholic Schools instead of two.

S. 19 gives power to the Governor in Council to appoint an Assistant to the Superintendent of Roman Catholic Schools.

S. 21 confers on the Governor in Council power to appoint eleven supervising Inspectors on denominational lines, whose duties are to visit, supervise, examine, and report upon all schools assigned to them by the proper Superintendent.

S. 23 of the Act defines the duties of the Supervising Inspectors in greater detail.

S. 22 deals with the appointment of Supervising Inspectors, their qualifications, moral character, etc. They are to be appointed on probation for two years, and if their work should prove satisfactory the appointment may be made permanent.

S. 24 deals with the salaries of Superintendents and Assistant Superintendents.

S. 26 makes a slight alteration in the pension to be paid to teachers who have retired through age or ill-health.

S. 27 deals with finance. It increases the general grant to $815,810.23.

This sum to be apportioned, allocated, distributed, and expended on denominational lines in the manner set forth in the various subsections of this section. The Education Act is so amended by S. 28 as to take the Department out of the control of the Colonial Secretary.

S. 30 gives power to the Minister to apportion to any school which shall raise a sum of money for the purpose of providing a library the sum of $20 to be expended in the purchase of books.

Highways.—C. 40 is "An Act respecting the Maintenance of Certain Public Roads." The Governor in Council under this Act has power to appoint a Road Commission consisting of ten persons. The Commission has power to make, construct, maintain, repair, and improve roads in the Districts of St. John's, Harbor Main, Brigus, Harbor Grace, Carbonear, Trinity, Bay de Verde, and Ferryland, and portions of the District of Placentia; and for this purpose the Commission is entrusted with the functions, powers, rights, etc., of Road Boards. The scale of fees respecting motor-cars and motor-vehicles is increased. These fees are to be paid to the St. John's Municipal Council, and are to be expended by the Commission in road-making machinery, in road repairing, and building. The Governor in Council is authorized to pay to the Commission each year a sum of money equal to one-half of the registration fees paid in that year provided the total amount does not exceed $10,000. The powers of the Commission are limited under s. 7 to any expenditure or indebtedness in excess of its revenue. The Commission has to furnish the Minister of Public Works every year with detailed accounts of receipts and expenditures. The Commission has to pay out of its funds $5,500 annually to the Municipal Council, as well as all amounts received as registration fees on motor-trucks. The fees payable run from $10 on motor-cycles to $75 on 30 horse-power motor-cars.

Commemoration Day.—C. 42 is "An Act to provide for the observance of Commemoration Day." This Act sets apart the first Sunday in the month of July as Commemoration Day, so that the deeds and sacrifices of those men and women of this Colony who took an active part in the late war shall be kept in remembrance with honour and respect.

Enemy Aliens.—C. 43 is "An Act concerning Former Enemy Aliens." This is a copy of an Imperial Act, passed for the purpose of prohibiting former enemy aliens from landing in this Colony for three years, and from acquiring property for a similar period, or any interest in any land, or any interest in any industry, or any share or interest in a company registered in this Colony, or share or interest in a British ship registered in this colony. No former enemy alien can be employed as master, officer, or member of the crew of any British ship. A penalty of $500 or imprisonment for six months, or both fine and imprisonment, is imposed for a contravention of the Act.

Women's Patriotic Trust Fund.—C. 45 is "An Act to incorporate the Women's Patriotic Trust Fund." During the War the women of Newfoundland, under the name of "The Patriotic Association of the Women of Newfoundland," collected money to provide comforts for soldiers and sailors on active service, and at the termination of the war held considerable money unexpended. This Act was passed at the request of the members of the Association to enable them to pass over the balance to trustees appointed under this Act. The funds of the Association are now vested in the trustees, and are to be expended in the erection of a Recreation Hut for soldiers and sailors now or hereafter to be accommodated in the

Tuberculosis Hospital at St. John's, or, on the completion of the work of the Association, in assisting children of soldiers and sailors to attend any school, college, or university, or to learn a trade, or to become fitted for the practical work of life. Trustees may expend not only the interest but the capital in their discretion, and may invest the funds in certain specified securities. They may also make by-laws, rules, and regulations respecting the internal government of the trustees and the carrying out of the objects of this Act, and may pay expenses of working the Trust out of the moneys vested in them, and when the purposes for which the Trust is created are fully carried out the Trust is dissolved.

Profiteering.—C. 47 is "An Act to check Profiteering." This is mainly a copy of an English Act passed with the same object in view. It appoints a Food Control Board, and confers on the Board certain powers regarding the investigation of prices which would yield a reasonable profit.

Under s. 3 the Board is required to take proceedings against persons charging a price yielding an unreasonable profit. Penalties are provided for violations of orders of the Board, or giving false information. The chairman and every managing director of a company may be guilty of an offence under this Act, unless he proves that it took place without his knowledge or consent. The Board has power to require evidence on oath. Articles for export are exempt from the operation of this Act. The Governor in Council may appoint local committees which shall have the same powers as the Board appointed under this Act, and the Board may make regulations as to the constitution, powers, and procedure of committees. Members of the Board or of any committee are not qualified to act in any case where they are trade competitors of the person against whom a complaint is under investigation. Penalty is provided against any seller who unreasonably refuses to sell. S. 15 provides that the proceedings before the Board or any committee shall be held in public. An appeal to the Supreme Court is allowed upon giving seven days' notice.

11. BERMUDA.

[*Contributed by* Sir Reginald Gray, K.C., *Speaker of the House of Assembly.*]

Acts passed—45.

Gaols.—Under No. 10 a prisoner employed on public works is credited with not more than one shilling per day to an amount not exceeding £20, the total sum being paid to him on the termination of his sentence.

Immigration.—No. 11 materially extends the interpretation of "passenger" in the principal Act of 1902, so as to include, *inter alia*, prostitutes, persons whose passage has been paid by a society or employer, those who have advocated publicly the overthrow by force of the Government of the United Kingdom, etc.

Aviation.—No 13 incorporates the Bermuda and West Atlantic Aviation Company, Limited, and, subject to certain conditions, grants to the company the sole right for five years to erect and maintain hangars, landing stations, fuel stations, and aerodromes in the colony for the use and accommodation of aircraft for commercial purposes, and the exemption for five years from import duty of all aircraft, machinery, tools, fuel,

and supplies imported by or for the company for use in connection with its aviation operations in Bermuda.

Police.—No. 14 provides for the increase and reorganization of the Police Force, and makes substantial increases to the salaries of its members.

Hospital.—No. 15 makes provision for the administration and maintenance of the King Edward VII Memorial Hospital erected in memory of his late Majesty and in commemoration of his illustrious reign.

Scholarships.—No. 20 increases to £200 the annual value of the two Bermuda Scholarships established in 1905 with the object of enabling candidates for the local Rhodes Scholarships to have two years' education out of Bermuda prior to going to Oxford University.

Development of the Colony.—No. 25 confers on the Bermuda Development Company, Limited, a local corporation, power to purchase or acquire compulsorily a tract of land comprising about 500 acres for the purpose of developing the tourist and hotel business in the Colony. Under a previous Act (No. 19) of the same session the company was given extensive powers to carry on the business of hotel-keepers and proprietors of places of amusement, recreation, and sport, including golf-courses, tennis-courts, and out-door sports of every description.

Leave of Absence.—No. 28 regulates the granting of leave to public officers, as the Colonial Office Regulations on the subject were not applicable to this Colony. The length of vacation leave varies according to the grade in which the officer is included, there being three grades.

Public Health.—No. 32 is an elaborate Act which consolidates and amends ten previous Acts on the subject, and was the most important Act of the year.

Currency.—No. 40 provides that any British currency note, which has ceased to be legal tender in the United Kingdom, shall cease to be legal tender in Bermuda after a date fixed by the Governor by proclamation.

Foreign Banks.—No. 43 precludes such banks as are defined in the Act from commencing or carrying on business in Bermuda except under a licence to be issued and renewed annually under the authority of the Governor. The expression "foreign bank" includes: (*a*) any individual banker carrying on business, who is not a natural-born British subject; (*b*) any banking or trust company incorporated or whose head office is in any foreign country; (*c*) any banking or trust company incorporated in or whose head office is in the United Kingdom or in any British Dominion or Colony, but of which more than half the shares or stock shall be held by persons other than natural-born British subjects.

III. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* Sir Robert Garran, K.C.M.G.]

Acts passed—56.

The bulk of the legislation passed in 1920 dealt with matters arising out of the war and the transition from war to peace. Some rather important amending Acts were passed; also new measures dealing with air navigation, aliens, industrial peace, and the establishment of an Institute of Science and Industry.

Air Navigation.—The Air Navigation Act, 1920 (No. 50 of 1920), authorizes the making of regulations to give effect to the Paris Convention for the Regulation of Aerial Navigation and to provide for the control of air navigation in the Commonwealth and the Territories under its control.

Aliens.—The Aliens Registration Act, 1920 (No. 49 of 1920), places on aliens resident in the Commonwealth and aliens entering the Commonwealth the obligation of becoming registered under the Act. Aliens resident in the Commonwealth may effect registration by giving notice in the prescribed form to the nearest aliens registration officer. Aliens entering the Commonwealth on an oversea vessel must attend in person before an aliens registration officer on board the vessel at the first port of call in the Commonwealth. Aliens resident in the Commonwealth must also notify the nearest aliens registration officer in regard to any change of abode or change of name. Foreign Consuls and their staffs and certain other persons are exempt from the Act.

Audit.—The Audit Act, 1920 (No. 23 of 1920), makes a number of amendments to the Audit Act, 1901–1917. The main amendment deals with the duties of the Auditor-General in regard to the auditing of returns, cash-sheets, vouchers, etc. The principal Act contained detailed directions in regard to this matter, but this provision has now been superseded by a short general provision which leaves more to the discretion of the Auditor-General. It directs him to audit the documents referred to, and to ascertain two things, namely (1) whether the moneys disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged, and (2) whether the provisions of the Constitution and of the Acts and Regulations relating to public moneys have been complied with. The Act also empowers the Auditor-General to admit certain vouchers where he is satisfied that they have been completely checked and examined by departmental officers. The provisions in regard to the giving of receipts have been made less stringent, and the giving of receipts for salaries and allowances is no longer required, a certificate by the officer making the payments being sufficient.

Canteen Funds.—The Australian Imperial Force Canteens Funds Act, 1920 (No. 3 of 1920), provides for the distribution of surplus moneys of canteens established in connection with that Force. These moneys and certain other moneys are to form a fund to be vested in trustees appointed by or under the Act. The trustees are charged with the duty of receiving and considering applications from the widows and orphans, widowed mothers, and other immediate dependents of deceased soldiers, and from disabled soldiers, for assistance and benefits. Advisory Committees must be appointed in each State and an annual report furnished to Parliament.

Customs.—The Customs Act, 1920 (No. 41 of 1920), deals with the problem of assessing the value of goods for duty having regard to fluctuations in the rate of exchange. The Act provides that the Minister may, upon the recommendation of the Commonwealth Board of Trade, direct that the value of goods for duty be calculated according to the "Bank rate of exchange" or the "Mint par rate of exchange." The "Bank rate of exchange" is defined as "the rate of exchange on London at which commercial transactions are settled between two countries," and the "Mint par rate of exchange" as "the standard value of the coins of any country as compared with the pound sterling in gold coin." Direc-

tions by the Minister under the Act are subject to disallowance by either House of Parliament.

Immigration.—The Immigration Act, 1920 (No. 51 of 1920), amends the Immigration Act, 1901–1912. The list of prohibited immigrants is supplemented by the addition of idiots, imbeciles, and insane persons, persons who advocate the overthrow by force or violence of the Government of any civilized country or who advocate certain other specified doctrines of a similar character, or belong to an organization which advocates such doctrines, and persons over sixteen years of age who are not in possession of a passport. For a period of five years and thereafter until the Government otherwise determines, persons of German, Austro-German, Bulgarian, or Hungarian parentage and nationality and Turks of Ottoman race are also prohibited immigrants. Arrangements may be made with other countries for the exemption of citizens of those countries from the provision in regard to passports. Immigrants may be deported within three years after their arrival in Australia if they are convicted of crimes punishable by imprisonment for one year or longer, and in certain other circumstances.

Judiciary.—Under the Judiciary Act, 1903–1915, the Full Court of the High Court could not give a decision affecting the constitutional powers of the Commonwealth unless it was concurred in by a majority of the justices of the Court. The Judiciary Act, 1920 (No. 38 of 1920), provides that a decision may be given in such cases if at least three justices concur in it.

Industrial Peace.—The Industrial Peace Act, 1920 (No. 21 of 1920), as amended by the Industrial Peace (No. 2), 1920 (No. 55 of 1920), makes an addition to the legislation dealing with the prevention and settlement of industrial disputes. It does not supersede the Commonwealth Conciliation and Arbitration Act, but provides additional machinery for dealing with the problem of industrial unrest, so far as the Commonwealth has power to do so. The Act expressly states that it is to be read and construed subject to the Constitution, and where any section is construed as in excess of the powers given by the Constitution it is nevertheless to be regarded as valid to the extent to which it is not in excess of those powers. "Industrial dispute" is defined as including (*inter alia*) any dispute in relation to employment in any industry carried on by or under the control of the Commonwealth or a State.

Provision is made for the establishment of a Commonwealth Council of Industrial Representatives, consisting of a chairman and an even number of members (not less than six nor more than eight). The chairman is to be chosen by agreement between the representatives of employers and employees. In default of agreement he will be appointed by the Governor-General. Employers and employees will be equally represented on the Council, and the members of the Council will receive such remuneration as the Governor-General directs. Meetings of the Council may be convened by the chairman whenever he thinks fit, or when requested by the Minister or by a majority of the members. The Council will have power to consider matters and tendencies in any part of the Commonwealth leading or likely to lead to industrial unrest; to inquire into, and declare its opinion on, any matter brought before it by a member or referred to it by the Governor-General; to confer with persons or associations in regard to matters affecting the prevention or settlement of industrial disputes; to appoint committees for the purpose of inquiry or con-

ference; to summon persons before the Council or a committee for the purpose of conference or of giving evidence; and to make reports to the Governor-General concerning any industrial matter.

In addition to the Commonwealth Council of Industrial Representatives the Act provides for the establishment of District Councils of Industrial Representatives in each State or part of the Commonwealth. These District Councils will be constituted and convened in the same way as the Commonwealth Council, and their powers, within their own spheres, will also be similar.

In addition to the Commonwealth Council and the District Councils, the Governor-General may appoint Special Tribunals for the prevention or settlement of any industrial dispute or disputes. These tribunals will be constituted on the same lines as the Councils. They may deal with disputes referred to them by the parties, and with certain other disputes, but they must not deal with any dispute in respect of which a plaint is pending before the Court of Conciliation and Arbitration. They will have power to inquire into all matters relevant to the dispute from the point of production to the final disposal of the commodity; but no trade secrets may be disclosed except with the consent of the owner thereof, and evidence regarding such matter may be taken in private. For the purpose of preventing or settling industrial disputes, any Special Tribunal, or the chairman thereof, or the Minister or any person authorized by the Minister, may convene compulsory conferences, which may be held in public or in private, at the discretion of the person or Tribunal summoning the conference.

In connection with the settlement of industrial disputes of which they have cognizance, and in addition to other powers conferred under the Act, the Special Tribunals will have all the powers which the Court of Conciliation and Arbitration has in regard to disputes within its cognizance; their awards may be enforced as awards of that Court, and agreements may be made between the parties and filed with the Industrial Registrar as if they were agreements made under the Commonwealth Conciliation and Arbitration Act.

In connection with any Special Tribunal, Local Boards may be appointed to exercise jurisdiction within such limits as may be prescribed by regulation or defined by the Special Tribunal. These Local Boards will consist of a chairman and one representative of the employers and employees. A Local Board may determine any industrial dispute referred to it by the parties or by the Special Tribunal in relation to which it was appointed. In regard to hearing and determining disputes, varying its awards, and enforcing its awards, a Local Board will occupy practically the same position as the Special Tribunal; but any determination by the Board will be subject to review by the Special Tribunal.

When an alleged industrial dispute is referred to a Special Tribunal or Local Board any party may apply to the High Court for a decision on the question as to whether an inter-State dispute exists or is threatened, impending or probable. A similar application may be made to the High Court in regard to any point of law arising in relation to the dispute or to any proceedings in connection with it. Such applications may be heard and determined by a single judge, whose decision will be final and without appeal.

Awards and orders made by Special Tribunals or Local Boards must not be challenged or questioned in any Court, but the chairman of any

such Tribunal or Board may himself remit any point of law to the High Court for determination.

Nationality.—The Nationality Act, 1920 (No. 48 of 1920), repeals the Naturalization Act, 1903–1917, and substitutes new provisions. In regard to the naturalization of aliens, the Act adopts Part II. of the British Nationality and Status of Aliens Act, 1914, as amended by the Act of 1918. It also contains general provisions copied from the British Act in regard to the definition of a natural-born British subject, the national status of married women and infant children, and the loss of British nationality. The procedure to be followed by applicants for naturalization is substantially the same as that required by the repealed Act.

Note Issue.—The Commonwealth Bank Act, 1920 (No. 43 of 1920), transfers the control and issue of Australian Notes from the Treasurer to the Commonwealth Bank. Provision is made, however, for the re-transfer to the Treasurer in time of emergency of the control and of responsibility for the whole or part of the note issue.

Parliamentary Allowances.—The Parliamentary Allowance Act, 1920 (No. 19 of 1920), increases the allowance payable to members of the Commonwealth Parliament from £600 to £1,000 per annum.

Passports.—The Passports Act, 1920 (No. 46 of 1920), requires all persons leaving the Commonwealth to have passports viséd or indorsed in the prescribed manner, but persons under sixteen years of age and certain other specified persons are exempt from this requirement. Passports must contain a personal description sufficient for identification and must have photographs attached. Persons entering the Commonwealth may be required to give up their passports, and no alien seaman may be discharged in the Commonwealth unless he lodges with an authorized officer his passport and any certificate of nationality or other official certificate establishing his nationality and identity which is in his possession.

Public Service.—The Arbitration (Public Service) Act, 1920 (No. 28 of 1920), deals with the terms and conditions of employment of officers and employees of the Public Service. The Arbitration (Public Service) Act, 1911, authorized these officers and employees to form associations, which, upon being registered as organizations, could submit questions relating to the terms and conditions of employment for determination by the Commonwealth Court of Conciliation and Arbitration. The Act of 1920 does not affect the provisions relating to the formation and registration of associations, but it removes the function of determining questions relating to employment in the Public Service from the Court of Conciliation and Arbitration to a Public Service Arbitrator specially appointed to deal with these matters. Any organization may submit to the Arbitrator a claim relating to salaries, wages, etc. The Arbitrator must then forward a copy of the claim to the Public Service Commissioner and to the Minister of any Department affected, and these persons may lodge objections. If no objections are lodged he must determine the claim in favour of the claimant organization. If objections are lodged the Arbitrator must call a conference, presided over by himself, of representatives of the parties. Following on this conference and after hearing such evidence as he requires on matters not agreed to at the conference, he must determine the claim. Any of the parties mentioned may at any time apply for a variation of any determination, and the procedure on such applications is similar to that already described.

The Arbitrator has power to summon witnesses and take evidence on oath. He may refer any claim or application to a person authorized by the Governor-General for investigation and report, and may appoint assessors to advise him in relation to any claim or application. All determinations must be laid before Parliament, and determinations which are not in accord with existing laws or regulations may be disallowed by either House.

Quarantine.—The Quarantine Act, 1920 (No. 47 of 1920), amends the Quarantine Act, 1908–15. The most important alteration of the law is that which empowers the Commonwealth Government to supersede quarantine measures under State Acts when an emergency exists which makes it necessary to do so. The Act also contains several amendments making the provisions of the principal Act applicable to aircraft.

Repatriation.—The Australian Soldiers Repatriation Act, 1920 (No. 6 of 1920) repeals the provisions of the Australian Soldiers Repatriation Act, 1917–18, and the War and Pensions Act, 1914–16 (see *Journal of the Society of Comparative Legislation*, vol. xvi, p. 70, vol. xviii, p. 95, Third Series, vol. i, p. 56, and vol. ii, p. 36). The provisions of these Acts have been amended in some directions and enacted in one Act. The most important alteration of the law is the substitution of a Repatriation Commission consisting of three paid members and charged with the general administration of the Act in place of the old Commission consisting of seven members acting in an honorary capacity, and possessing only advisory functions, the general administration of the Act being in the hands of the Minister. Property previously vested in the Minister is now vested in the Commission, which is a body corporate, capable of suing and being sued; but the Commission is still subject to the control of the Minister, and before exercising any power which involves the expenditure of more than £5,000 it must submit its proposals for, and obtain, the approval of the Minister.

In the case of the State Repatriation Boards also the Act provides for the substitution of three paid members for seven honorary members. No alteration has been made in regard to the granting of assistance and benefits to soldiers and their dependents, but the benefit of these provisions has been extended to mothers and step-mothers of Australian soldiers born out of wedlock. In regard to pensions, the powers and duties of the Commissioner of Pensions and the various deputy commissioners have been transferred respectively to the Repatriation Commission and the Repatriation Boards in the various States. No pension is payable in respect of injuries intentionally self-inflicted or injuries arising from a breach of discipline. The scale of pensions payable under the Act has been altered so as to provide for increased pensions in some cases, and the Act provides for a special pension of £8 per fortnight to men who have been blinded or totally and permanently incapacitated as the result of war service.

Science and Industry.—The Institute of Science and Industry Act, 1920 (No. 22 of 1920), provides for the establishment of a Commonwealth Institute of Science and Industry, which is to be a body corporate consisting of the Director, and to have power to sue and be sued and to hold and acquire property. The powers and functions of the Director are as follows:

(*a*) The initiation and carrying out of scientific researches in connection

with, or for the promotion of, primary or secondary industries in the Commonwealth;

(*b*) The establishment and awarding of industrial research studentships and fellowships;

(*c*) The making of grants in aid of pure scientific research;

(*d*) The recognition or establishment of associations of persons engaged in any industry or industries for the purpose of carrying out industrial scientific research and the co-operation with, and the making of grants to, such associations when recognized or established;

(*e*) The testing and standardization of scientific apparatus and instruments, and of apparatus, machinery, materials, and instruments used in industry;

(*f*) The establishment of a Bureau of Information for the collection and dissemination of information relating to scientific and technical matters; and

(*g*) The collection and dissemination of information regarding industrial welfare and questions relating to the improvement of industrial conditions.

Advisory bodies may be appointed in each State to assist the Director, and he is directed to co-operate, as far as possible, with existing State organizations. Officers may be appointed under the Act for such periods and subject to such conditions as may be prescribed. All discoveries and inventions made by these officers become the property of the Institute, but bonuses may be paid to them for such discoveries and inventions. The Director may arrange for the carrying out of special investigations by the Institute and for the payment of fees in regard thereto, and, unless he has agreed to the contrary, he may publish information in regard to any matter investigated by him.

Territories.—The New Guinea Act, 1920 (No. 25 of 1920), authorizes the Governor-General to accept a mandate for the government of the territories and islands formerly constituting German New Guinea, and makes provision for the government of that territory under the name of the Territory of New Guinea. The Act provides for the appointment of an Administrator and such officers as may be necessary. Until Parliament makes other provision, the Governor-General may make Ordinances for the government of the Territory. These Ordinances must be laid before Parliament, and may be disallowed by either House.

Express provision is made for the carrying out of guarantees in regard to the prohibition of the slave trade and of forced labour, the control of the traffic in arms and ammunition, the supply of intoxicating liquor to the natives, the military training of the natives, the establishment of military or naval bases or other fortifications in the Territory, and the free exercise of all forms of worship, etc. The Act also provides that an annual report must be sent to the Council of the League of Nations.

Treaties.—The Treaties of Peace (Austria and Bulgaria) Act, 1920 (No. 40 of 1920), makes provision for carrying out the treaties of peace with Austria and Bulgaria, so far as the Commonwealth is affected.

War Gratuity.—The War Gratuity Act, 1920 (No. 2 of 1920), as amended by the War Gratuity Act (No. 2), 1920 (No. 17 of 1920), provides for the payment of a gratuity to persons who served with the Australian Naval and Military Forces during the war. Returned nurses are entitled to the benefits of the Act; also Imperial Reservists who when called up for service were *bona fide* resident in Australia. The amount of the

gratuity is based on length of service. In the case of soldiers embarked before November 10, 1918, the gratuity is calculated at the rate of 1*s.* 6*d.* for each day's service, and in the case of those who embarked after that date and of certain members of the Naval Forces who did not serve on a sea-going ship the rate is 1*s.* per day. The Act contains detailed provisions dealing with the method of calculating the period of service. In most cases the period is from the date of embarkation or of taking up duty on a sea-going ship until June 28, 1919.

Where the eligible person dies (whether before or after the commencement of the Act) before payment of the gratuity or is mentally unfit it may be paid to his dependents. Except in certain specified cases the gratuity is not payable in cash, but in Treasury Bonds maturing not later than May 31, 1924, and bearing 5¼ per cent. interest free of income-tax.

War Precautions.—The War Precautions Repeal Act, 1920 (No. 54 of 1920), repeals the War Precautions Act, 1914–18, and makes provision for certain matters arising out of this repeal, such as the continuance for a limited period of the War Precautions Regulations relating to the control of coal and of wharves and to the registration of companies, firms, and businesses.

The Act also authorizes the Prime Minister to enter into certain arrangements in regard to the marketing of primary products. Under the Act British subjects arriving from overseas may be compelled to make an oath or affirmation of allegiance before being permitted to land, and may be deported if they are afterwards found to have said or done anything in violation of that oath or affirmation. The Act also deals with unlawful assemblies in the vicinity of Parliament House and with seditious statements, etc.

Another provision requires agents of oversea companies and firms to furnish annually to the Collector of Customs certain information in regard to such companies or firms. Regulations may be made under the Act dealing (*inter alia*) with the publication of books, pamphlets, etc., purporting to be records of the services of any Naval or Military Expeditionary Force raised in the Commonwealth, the publication of newspapers or periodicals in a foreign language, and the use of the word "Anzac."

2. NEW SOUTH WALES.

[It is hoped to publish the Summary of Legislation in the next Review.]

3. QUEENSLAND.

[*Contributed by the* Hon. Littleton E. Groom, M.A., LL.M., *and* J. F. Gamble, Esq., B.A., LL.B.]

Acts passed—12.

Owing to the 1919 session of the Parliament extending into 1920, and to the holding of elections, the amount of legislation passed during the 1920 session was small.

Agriculture.—The Wheat Pool Act of 1920 (11 Geo. V., No. 4) authorizes the appointment of a State Wheat Board consisting of representatives of wheat-growers in the State to deal with the marketing of the wheat

harvest of the season 1920–21, and makes provision for extending the Act by Proclamation to subsequent crops. This Board has power to sell or arrange for the sale of wheat, to employ such agents as are necessary, to arrange for financial accommodation, and to set aside and store wheat for seed. As a general rule, no wheat can be sold or purchased except through the Board. All wheat must be delivered in the name of the grower, and the Board must grade the wheat and pay the grower for f.a.q. wheat at the rate of 9s. per bushel seaport basis; but the Board does not pay for the wheat in cash. Upon delivery of the wheat it issues a certificate to the grower and makes advances thereon from time to time until the full amount is paid. No wheat can be gristed without the authority of the Board, and provision is made for the registration of liens on wheat and for the making of regulations dealing with meetings of the Board, the making of contracts for the sale of wheat, and other matters arising in connection with the administration of the Act.

Banking.—The Commonwealth Bank Agreement Ratification and State Advances Act of 1920 (11 Geo. V, No. 5) ratifies an Agreement made between the Commonwealth Bank and the Government of the State of Queensland with respect to the transfer to the Commonwealth Bank of the business and assets of the Queensland Government Savings Bank. The functions of the Savings Bank Commissioner in regard to State Advances are transferred to the Treasurer, and for this purpose the Act incorporates the office of Treasurer as a Corporation Sole by the name of the "State Advances Corporation." The Agreement in relation to the transfer to the Commonwealth Bank of the assets and business of the State Savings Bank is set out in the Schedule.

Local Authorities.—The Local Authorities Acts Amendment Act of 1920 (11 Geo. V, No. 11) makes a number of changes in the system of local government. The franchise for elections of members of Local Authorities has been widened and the right to vote at such elections extended to all persons whose names are on the Electoral Roll for the election of members of Parliament. All persons on the Roll must vote or send to the Returning Officer a valid and sufficient excuse. The chairman of the Local Authority (who in the case of a town or city is the Mayor) instead of being chosen by the members of the Local Authority, will be elected at the same time as the Members of the Local Authority and on the same franchise. The chairman may authorize works which in his opinion are urgent provided the cost does not exceed £20 or such amount as the Local Authority may determine. The powers of the Local Authority in regard to houses unfit for occupation have been extended. The Local Authority may serve notice on the occupier of any such house requiring him to purify, repair, or alter the house or to cause it to be pulled down. In case of default the person notified will be liable to a penalty of 10s. per day during which the default continues, and in the last resort the Local Authority may cause the house to be pulled down or destroyed and may recover from the person in default the expenses incurred.

The Act increases the power of Local Authorities to levy General Rates and authorizes them to remit rates in the case of incapacitated returned soldiers, persons suffering from industrial diseases as defined by the Workers' Compensation Acts, and persons in receipt of invalid or old-age pensions. In the case of farm land adjacent to a town or city, if the land is not in demand for residential purposes and more than half of it is

cultivated annually for purposes of food production, the Local Authority may reduce the General Rate. The provisions in regard to borrowing money have been altered. Under the previous Act twenty rate-payers affected could, on payment of a deposit of £10, demand a poll in regard to any proposed loan. The present Act requires 10 per cent. of the electors of the area affected to make such demand and abolishes the condition requiring a deposit. The Act increases the power of a Local Authority to borrow in cases where, owing to circumstances beyond the control of the Local Authority, the amount borrowed for any particular work has proved inadequate.

Miscellaneous.—Other Acts were passed amending the Liquor Act, the Mining Acts, and the Income-tax Act.

4. SOUTH AUSTRALIA.

[*Contributed by* A. J. HANNAN, ESQ., M.A., LL.B., *Parliamentary Draftsman, South Australia.*]

In all, forty-three Acts were passed by the South Australian Parliament during the 1920 session. Of this number, five Acts were purely private in character; three dealt with Appropriation and Supply; and three (Nos. 1419, 1431, and 1433) were of administrative interest only. No. 1429 authorized an increase in the Government subsidy to the Police Pensions Fund, and No. 1432 raised the limit of rating power of the Renmark Irrigation Trust. No. 1435 authorized the carrying out of a huge water-conservation scheme. These Acts will not be dealt with in this Summary. There were two semi-private Bills taken up by the Government and treated as public matters, and both dealt with private charities: The Lady Kintore Cottages Act (No. 1430) makes provision for the taking over by the Adelaide Benevolent and Strangers' Friend Society, Incorporated, of the administration of the trusts concerning certain cottages known as the Lady Kintore Cottages, which had been purchased by private subscription for the use of indigent widows and deserted wives and their families. The other semi-private Act, Succession Duties (Peter Waite Benefactions) (No. 1422), provides that certain gifts of real and personal property to the Adelaide University by Mr. Peter Waite, of Glen Osmond, to accrue after his death, are to be free of succession duty.

Post-war Legislation.—The Discharged Soldiers Settlement Act Further Amendment Act (No. 1439) makes an important amendment in the Act of the same title passed last year. That Act conferred upon the Minister power to acquire compulsorily any "large estate" for the purpose of soldier settlement. It contained a provision whereby the owner of any large estate, a portion of which was to be acquired, could require the Minister to take all the lands belonging to him which adjoin or are occupied together with the desired portion. This Act provides that where the owner avails himself of this right and requires the Minister to take the whole of the estate and the Minister does not desire to do so, the Minister may revoke his notice of intention to acquire and may withdraw the proceedings altogether, and the owner is to have no claim against the Minister by reason of the giving of the notice or of its revocation.

The War Terms Regulation Act (No. 1448) prohibits the use for business purposes, or in connection with the nomenclature of private

residences, boats, vehicles, or institutions, of any of the terms "Anzac," "Aussie," "Returned Soldier," "Returned Sailor," "Repatriation," "Australian Imperial Force," "A.I.F," or of any other word or expression associated with the recent war which is declared by the Governor to be a "prohibited word" for the purposes of the Act. As a direct method of enforcing the Act, the Registrar of Companies is directed to refuse registration to any company or firm in the name of which is included any prohibited word. The Act was passed in pursuance of an agreement between the States for uniform legislation on these lines.

Wheat Marketing and Transportation Act (No. 1426). This Act continues the scheme for pooling and marketing the Australian wheat crop for each season rendered necessary by the effects of the war, this time *expressly* in collaboration with the Commonwealth and the States of New South Wales, Victoria, and Western Australia. The objects of the Act are twofold and are sufficiently set out in the preamble to the Act. The first part of the preamble reads: "Whereas owing to the continuance of the great scarcity of the means of transportation which resulted from the existence of a state of war the satisfactory marketing of the Australian wheat harvest of the season 1920–21 is endangered: And whereas certain Ministers of the Crown of the States of New South Wales, Victoria, South Australia, and Western Australia have in a conference held for the purpose outlined a proposed scheme for concerted action by the Governments of the said States, in co-operation with the Government of the Commonwealth of Australia, if it agrees to co-operate with the said Governments, or, failing such co-operation, then independently of the Government of the Commonwealth, for utilizing on a fair basis the means of transportation available and for the marketing of the said harvest at prices based on those obtainable on the overseas wheat market, with certain deductions: And whereas it is expedient to empower the Government of South Australia to join with the said Governments . . .," etc. The second part reads: "And whereas, during the year ending on the thirty-first day of December, nineteen hundred and twenty, the Minister in exercise of his powers under the Wheat Harvest Acts, 1915 to 1919, has sold to various millers wheat for gristing into flour for Australian consumption during the said year, and may, during the remainder of the said year, sell to millers further wheat for the like purpose: And whereas it is desirable that flour gristed from such wheat, and whether remaining in the possession of millers or disposed of by them, shall not be accumulated for the purposes of sale after the expiry of the intended consumption period. . . ."

The first purpose of the Act is achieved by the same scheme that has already been explained in previous summaries of legislation in dealing with Acts of similar title, with the exception that the Minister, instead of being merely the agent or bailee of the grower for the purpose of marketing, under this Act buys the wheat straight out from the grower and becomes the absolute owner. The defect of the old method was that the Minister was liable to actions for negligence in his capacity of bailee of the wheat pending sale. At the end of the war a great quantity of old wheat was stacked at various ports and railway stations awaiting shipment, and this had suffered deterioration through a mice plague and a weevil plague. An action has actually been begun against the Minister, claiming very heavy damages for alleged negligence in storing and protecting the wheat.

The scheme for effecting the other purpose of the Act, set out in the concluding lines of the preamble above quoted, may be shortly outlined as follows: The Minister appoints a "return day" on which every person holding flour exceeding one-half ton in weight must make a return to the Minister of the flour held by him on that day. The wheat equivalent of this flour was purchased by the miller or baker required to make the return at 7*s*. 8*d*. per bushel. The Minister on the return day fixes the price of wheat for gristing into flour for Australian consumption at some higher rate (9*s*. was actually fixed). The holder of the flour then becomes liable to pay to the Minister the difference between the value immediately prior to the "return day" of the wheat equivalent of his flour and its value at the price so fixed by the Minister. The scheme thus discourages the accumulation of stocks of flour, and renders the holding of them for a rise in price altogether nugatory; any increase must be paid to the Minister.

Financial.—City of Adelaide Municipal Loan Act Amendment Act (No. 1445). This Act increases the Adelaide City Council's power of borrowing for certain specified works, such as street paving, from £125,000 up to an amount not exceeding the sum that would result from a rate of ten shillings in the pound on the assessed annual value of the rateable property within the city of Adelaide. The reason is the inadequacy of the previous amount in view of the great rise in prices of material and labour due to the war.

The Public Purposes Loan Act (No. 1438) authorizes the raising of loans to the amount of £12,605,550 by the issue and sale of Inscribed Stock or other public securities for the purpose of various public works. The main items are £4,000,000 for the settlement of discharged soldiers on the land and £3,200,000 for the provision of homes, mainly for discharged soldiers. The Main Roads Fund Act (No. 1424) authorizes the raising by the same means of £150,000 for the reconstructing of the main roads of the State, which have been allowed to fall badly into disrepair during the war.

The Taxation Act Further Amendment Act (No. 1434) repeals the exemption from income-tax of income derived from land not exceeding £1,000 unimproved value, and declares that the tax on such income is to be first payable in respect of income for the financial year 1919-20. The exemption was an anomaly and relieved from payment of income-tax a number of farmers, orchardists, and dairymen who earned fairly large incomes from their land. The super-tax of 25 per cent. imposed on income by the Act of 1919 is continued in respect of income for the year 1919-20.

Industrial.—Industrial Code (No. 1453). This Act consolidates the existing legislation on industrial matters, with some important amendments. Only these amendments are here mentioned. The Act repeals all the pre-existing Factories and Industrial Arbitration Acts, but most of their provisions are re-enacted. The Act is very voluminous, running to 135 pages.

1. The Act extends the right of access to the Industrial Court to *daily- and weekly-paid* employees in the service of the Government and of the South Australian Railways. This is a very far-reaching provision and was strongly opposed in Parliament on the ground that its effect would be to do away with any effective control by Parliament over the annual Estimates of Expenditure. Parliamentary control is considered to have been preserved by s. 48 (1), which provides: No award or order of the Court shall, as regards Public Service employees or Railway employees,

come into force or have any effect whatever until after such award or order has been laid before both Houses of Parliament, and in case such award or order provides for the payment to such Public Service employees or Railway employees of increased wages, prices, or rates, or piece-work prices or rates, until the money for the payment thereof has been appropriated by Parliament for that purpose: Provided that upon such appropriation such award or order shall take effect as from the date fixed by the Court for the coming into operation of such award or order.

2. It allows the deduction from wages of the value of "allowances," i.e. any allowance or concession or customary payment in kind granted or made by an employer to his employees, and having an assessable monetary value. Allowances do not, however, include annual leave and public holidays, long-service leave, uniforms, privilege tickets and passes, allowances or concessions granted to employees while in camp, or any other allowances or concessions prescribed by regulations. The amount that may be deducted as the value of allowances is fixed either by the Industrial Court or by an Industrial Board, whichever is adjudicating with respect to the particular industry.

3. The overlapping of State and Commonwealth Awards is prevented by providing that if any employees or any association of employees bound by a State award become subject to a Commonwealth award, the State award, so far as regards such employees, is to become null and void.

4. Provision is made to deal with the demarcation of callings. If any question arises as to the right of employees in any particular calling to do certain work to the exclusion of employees in any other calling, a Special Board is to be constituted for the purpose of determining the matter. This Special Board is to be representative of employers and employees in all callings interested, with the express qualification that no member of the legal profession may be a member.

5. A new body is constituted under the name of "The Board of Industry," with two principal duties: Firstly, the scheduling and grouping of industries for the purpose of the appointment of Industrial Boards with respect to the various groups; and secondly, the ascertainment and declaration of the living wage. The "living wage" is defined as being that sum sufficient for the normal and reasonable needs of the average employee living in the locality where the work under consideration is done or is to be done. If the living wage, when it has been declared, exceeds the minimum wage fixed by an Industrial Board, this minimum is to be automatically raised to the living wage; if subsequently the living wage is reduced, the wage fixed by the Board automatically decreases to the amount declared to be the living wage or to the minimum fixed by the Board, whichever is the higher. The first mentioned function of the Board (the rescheduling and grouping of industries) was rendered necessary by the confusion and overlapping that had occurred under the old wages-board system owing to the creation of two classes of wages boards—"craft boards" and "industry boards"—having in many cases jurisdiction over portions of the same industry. A "craft board" was a board appointed for a calling in which the employees' business was not necessarily that of the employer, *e.g.* the Drivers' Board covering drivers employed in every class of business, or the Storemen, Packers, and Night Watchmen's Board covering, for instance, all night watchmen no matter by whom or in what class of business employed. "Industry Boards," on the other hand, might be said to be boards appointed for those in-

dustries in which the occupations of employer and employee were the same. As a result of the creation of these two classes of boards there was considerable confusion as to the relative jurisdictions of the various boards, and in order to set the matter right Parliament has abolished all the old Wages Boards, and, before the new Industrial Boards are appointed to take their place, the Board of Industry is to arrange the various industries into groups on some scientific and logical basis.

6. As already mentioned, Industrial Boards are substituted for the old Wages Boards. These Industrial Boards are to consist of a chairman and of four, six, or eight members, equally representative of employers and employees. These representative members, instead of being appointed by the Minister, as in the case of the old Wages Boards, are selected by the President of the Industrial Court from among persons nominated for the positions by the majority of employers and employees respectively. If no nominations are made, the President himself will undertake the selection unaided. This method has been adopted to avoid difficulties which experience in connection with the administration of the old Wages Board system has shown to exist.

Mines and Works Inspection Act (No. 1444). This Act collects in one Act all the existing legislative provisions dealing with the inspection of mines and works and mining machinery in the interests of the safety and health of the miners, with such amplications and improvements as experience in the administration of mining matters in this and other States has shown to be desirable. Most of the provisions of the Act are replicas of existing legislation in other States. The only amendment calling for comment is the raising of the age of youths who may be employed underground in any mine from fourteen years to eighteen years of age. Under existing legislation girls and women of any age have been altogether debarred from working underground, and this disqualification is continued.

Social.—Advances for Homes Act Further Amendment Act (No. 1440). This Act authorizes the expenditure for the current financial year on homes for returned soldiers and working men of the sum of £1,200,000, and raises the maximum amount that may be advanced to an individual for the purpose of providing him with a home for himself and his family from £500 to £700. Until the passing of this Act no person was eligible for assistance who was in receipt of an income of more than £300 per annum. This Act extends the limit, and makes eligible any person receiving up to £450 per annum. The increase is due, of course, to the general rise in wages arising out of the war. Until the Advances for Home Acts passed in previous years, returned soldiers and dependents of deceased soldiers receive preferential treatment in certain directions. They are entitled, for example, to receive up to the full value of their house by way of advance from the State Bank, and not, as in the case of a civilian, up to four-fifths of the value only. This Act provides that any person who is the parent of four children under sixteen years of age and who puts up a deposit of £25 is to be entitled to the same privileges and preferential treatment as a returned soldier, with the following differences : The loan is to be for a shorter term, and is to bear interest at the current rate and not, as in the case of a soldier, 4½ per cent., and the property is not to be exempt from rates and taxes for five years, as in the case of the soldier. In all cases applicants for advances may deposit any money required of them by instalments, and when the requisite amount has been deposited the Board may make the advance. This is to meet cases where an applicant wishes

to purchase or build a house, and the State Bank has no power to advance the full amount required, and requires the margin between the amount it is prepared to advance and the value of the security to be made up by the applicant. Unless his application for an advance is refused, these instalments are not repayable to the applicant without the consent of the Minister. This provision is made for the purpose of discouraging the depositing of instalments with the Bank by persons who have no real or fixed intentions of ultimately making an application for an advance, and to prevent the Board's offices being utilized as a substitute savings bank. The Board is authorized itself to underwrite the insurance on the houses it provides, with the sole qualification that the rate of premiums demanded must not exceed the average rate of premiums on fire-insurance companies carrying on business in the State. The result is a modified system of State insurance.

Footwear Regulation (No. 1427). Some years ago, at a Premier's Conference, it was determined that uniform legislation regulating the manufacture and sale of footwear should be passed in the States of Queensland, New South Wales, Victoria, and South Australia. South Australia legislated promptly and the Footwear Regulation Act, 1911, was passed, following on the lines of a draft Bill prepared by New South Wales. This 1911 Act was not to come into force until a similar Act had been passed in New South Wales, Victoria, and Queensland. In 1916 an Act was passed in Victoria, largely similar to our 1911 Act, but containing some minor differences which were departures from the uniform scheme agreed upon in 1911. New South Wales and Queensland have not yet legislated, but it is very probable that any legislation passed by those States will be, as far as possible, uniform with the Victorian legislation. Owing to this state of things it has been impossible to bring the South Australian Act into operation, and it has up to the present remained a dead letter. Uniformity of legislation with Victoria at least was urgently required, for most of South Australia's interstate boot trade is done with Victoria. In the circumstances, it has been considered the wiser course to repeal the 1911 Act and to adopt the Victorian measure, and this is all that the Act under review does.

Impounding Act (No. 1441). This Act consolidates, with amendments, the previous Acts relating to the impounding of cattle trespassing on the roads or on private property, of which the principal Act was passed as long ago as 1858. The main scheme of the pre-existing law has not been altered, and the amendments made are all directed to bringing the Acts into line with the practical every-day requirements of the present time, in accordance with the recommendations of the local governing bodies who administer the impounding law.

Inebriates Act Amendment (No. 1423) amends the Inebriates Act, 1908, whose object was to supply compulsory medical and other curative treatment to habitual drunkards in special homes or " institutions " under Government control. This amending Act authorizes the order of commitment of an inebriate to an " institution " under the principal Act to be made by two justices of the peace, or, if the patient voluntarily submits, by one justice. For one justice to have jurisdiction, however, the application must be made to him by the inebriate himself or by some person authorized by the inebriate whilst sober and fully understanding the nature of his act. At the present only a special magistrate or a judge of the Supreme Court may make such an order. The Act also makes provision

for voluntary patients to be received, treated, and detained in an institution under agreement with the superintendent thereof. The agreement is to have the same operation as if it were an order of commitment under the Act, and as if the patient were the subject of such an order. The object of allowing a voluntary patient to be received into an institution under agreement is to avoid the publicity of attendance before a judge or special magistrate, the necessity for which has in the past discouraged many who would otherwise have taken advantage of the Act. Once the patient has been received into an institution under the agreement he may be treated and detained there even against his wish for the period agreed upon, or until he is cured. This provision was found necessary because many voluntary patients in the past have, after the lapse of a short period, changed their mind and insisted upon being released before their cure had been properly effected.

The Intestate Succession (Mother's Share) Act (No. 1423) alters the law of intestate succession to this extent, that where a person dies after the passing of the Act leaving neither a relict nor children, but leaving both a father and mother, his estate is to go to the father and mother in equal shares. In all other cases the law remains the same. The Act carries still further the policy of the Married Women's Property Acts in putting husband and wife on an equality with regard to their property rights.

The Licensing Act Amendment Acts (Nos. 1436 and 1449) make certain minor amendments in the licensing law. The former Act curtails the hours for the supply of intoxicating liquor on Christmas Day. At present liquor may be lawfully supplied at any time during the period between midnight and two o'clock in the afternoon; this Act restricts the period to the two hours between nine and eleven o'clock in the morning. The latter Act makes provision for the surrender of leases of licensed premises which have been delicensed either as the result of a local-option poll or of the refusal of the Licensing Court to renew the licence on the ground that the licensing of the premises is not required for the accommodation of the public, or on some similar ground. It may be mentioned that in this State, unlike some of the other States, no compensation is payable either by the State or from any other source to the persons interested in any premises delicensed by any such process.

The Lottery and Gaming Act Amendment Act (No. 1447) renders much more stringent the law in this State with respect to betting and bookmaking in a public place. These practices have long been unlawful in South Australia, but it has been found very difficult to stamp them out, partly by reason of the fact that the penalties hitherto operating have come to be regarded by the bookmakers as almost in the nature of a licence fee. The penalties are accordingly made much heavier, and very high minima are prescribed. Any person suspected by the police of bookmaking on any racecourse or at any other public gathering may be removed, and if he re-enters he is guilty of an offence. To offset this repression of the bookmaker and to act as a solace to the small punter thus deprived of his opportunity to "back his fancy," racing clubs using the totalizator are compelled to provide half-crown totalizators in all stands and on the flat, and if they do not do so they may have their totalizator licence cancelled. At present, as a matter of practice, the minimum amounts that may be wagered on the totalizator are, in the Derby Stand, five shillings; and in the Grandstand, five shillings for the ladies and one pound for the men.

Dividends remaining in the totalizator unclaimed by the persons entitled to them must be paid over by the racing clubs for the purposes of the general revenue of the State.

The Public Service Act Amendment Act (No. 1420) provides that persons entering the Government service after July 1, 1920, and employed at daily or weekly wages or at piece-work rates of payment are not to be entitled to the long-service leave (four months for every ten years' service) usually granted to public servants. This step is consequential on the extension to Government employees of the basic living wage recently declared by the Industrial Court with reference to the outside employees (12*s*. 6*d*. per day), and the adoption of the marginal differences in rates for skilled or partially skilled labour. The adoption of this policy involved the "Assessment of Privileges," *i.e.* the assessment in terms of money of the advantages enjoyed by Government workers (not being salaried officials) which are not shared by those outside the Government service.

Secret Commissions Prohibition Act (No. 1425). This Act was passed in pursuance of a resolution adopted at a Premier's Conference in 1918 to the effect that "it is desirable that uniform secret commissions laws should be passed by the States." South Australia had already, in 1910, in pursuance of a similar resolution, passed a Secret Commissions Act which was to come into operation by proclamation. This proclamation was never made, for the reason that when the Act was passed it was contemplated that uniform legislation would be passed by the other States, and that only after this had been done should the South Australian Act be proclaimed. Acts have now been passed in Tasmania and Victoria, but not in precisely the same terms as the 1910 Act. In this matter it has been considered highly desirable to have uniform legislation throughout the States; and although our 1910 Act, if made operative, would have been adequate for all the purposes of the present Act, still in order to secure absolute uniformity and to give effect to the object aimed at by the resolution of the Premiers' Conference already referred to, it was decided to repeal the 1910 Act and substitute the present one. This is the sole reason for the present measure. The State legislation does not cover the whole field; it is complementary to Federal legislation, which prohibits secret commissions in the course of inter-State trade and commerce.

The Venereal Diseases Act (No. 1442) follows largely on the lines of the similar legislation passed by all the other States. South Australia has been the last to legislate on this matter. The Act provides for the compulsory treatment of venereal disease, and makes provision for a limited scheme of compulsory notification. The notification will probably be by numbers, but in no case will the patient's name be divulged by the medical adviser unless he refuses or discontinues treatment before cure. In that case his name will be reported to the Inspector-General of Hospitals, the authority administering the Act. Every sufferer from venereal disease must either attend for treatment at a prescribed hospital or submit himself for treatment by a medical practitioner, and must continue the treatment until cured. When cured he will be given a certificate. Provision is made by a system of notification between practitioners for keeping track of the patients in case of transfer from one district to another or in case of change of medical advisers. No person other than a medical practitioner may treat cases of venereal disease, and articles capable of being used unlawfully for the alleviation of the disease may be seized. No person suffering from venereal disease may work in any place in any capacity

requiring him to handle food intended for human consumption, or in a hairdressing saloon. If a medical practitioner has reason to believe that a patient of his, suffering from venereal disease, is about to marry, he must inform the Inspector-General, and that officer will then communicate the fact to the other party to the proposed marriage and also to the parent or guardian of such other party. Any such communication made in good faith is absolutely privileged. Any person who marries whilst suffering from the disease in an infectious stage is guilty of an offence. Provision is made for the free treatment and for the compulsory detention and treatment in lock hospitals of recalcitrant sufferers.

The Act is to come into force by proclamation. Probably this proclamation will not be made until the Government have arranged for the free treatment of sufferers in all the large country towns (there is already a free night clinic in Adelaide and for the establishment of chemical and bacteriological examination centres, and have made arrangements with the medical profession as to the precautions they will take before definitely diagnosing the existence of the disease.

By the Workmen's Compensation Act Further Amendment Act (No. 1437) the maximum amount of a workman's average " weekly earnings " which he may receive and still remain eligible for compensation under the Act is raised from five pounds per week to eight pounds. This is in consequence of the general rise in wages due to the conditions brought about by the war. The maximum of five pounds per week was fixed in 1911, and it is considered that the present maximum will not include within the scope of the Act any class of workman not then included.

The Nurses' Registration Act (No. 1451) provides for the registration of nurses, mental nurses, and midwives. The qualifications for registration required of nurse, mental nurse, or midwife are alternative. One qualification involves the passing of a prescribed examination and the undergoing of a prescribed course of training in institutions approved as whole-time or part-time training schools. The Act contemplates the possibility of a trainee receiving part of her training at a small country institution, and provides a means by which training at such a " part-time " institution may be counted towards service of the prescribed course. The alternative qualification for registration is the possession of a certificate of training awarded by any recognized training body—for example, the Australasian Trained Nurses' Association or the Royal British Nurses' Association. In the case of a nurse the course of training must not be less than three years. Any person in practice as a nurse at the time of the passing of the Act is entitled to be registered if she passes a special examination prescribed for such persons, or if she proves that she has been in *bona fide* practice as a nurse for five years. In the case of a mental nurse the very fact that she was in practice as a mental nurse at the commencement of the Act is sufficient to entitle her to registration. The qualifications for registration required of a midwife in practice at the time of the passing of the Act are, firstly, that she proves that she has been in practice for five years and also that she passed a prescribed *viva voce* examination ; *or*, secondly, that she proves to the satisfaction of the registering authority that she is competent and that she has in the past attended at least twenty cases of confinement during the lying-in period. She must in addition, if required, pass a special examination prescribed for such persons. Provision is made for admitting to registration persons trained elsewhere on reciprocal terms. In

the case of nurses and mental nurses there is no prohibition against unregistered persons practising, but they are debarred from suing for fees for their services in the Courts. In the case of midwives unregistered persons are also debarred from practising, but there are exemptions in favour of persons acting in cases of emergency or where there is no doctor within five miles of the place of accouchement. Only registered persons may hold permanent appointments as matron, sister, or nurse in charge or midwife, in any Government institution or in any institution in receipt of State aid.

The Opticians Act (No. 1443) is very similar in its purpose to the preceding Act, which is well expressed in its title, ". . . to secure the better training of opticians and to regulate their practice." At present there is no control or supervision exercised over the practice of optometry in South Australia. This Act prohibits any person other than a medical practitioner from practising or holding himself out as an oculist or ophthalmic surgeon, and prohibits any person other than a medical practitioner or a certified optician from practising optometry or dispensing oculists' and opticians' prescriptions for glasses, and from suing in the Courts for payment of services in optometry. The qualification required of a person for him to be entitled to be registered as a certified optician may be *any one* of the following: Three years' *bona fide* practice before the passing of the Act in optometry and the passing of an elementary practical examination in optometry deemed sufficiently comprehensive reasonably to safeguard the public against possible injury arising from ignorance or incompetence; the possession of a certificate of competency from the Board of Optical Registration appointed by the Act or of any other prescribed certificate; the right to practise optometry in the United Kingdom or in any other part of His Majesty's Dominions with which reciprocal arrangements have been made for the recognition of the status of persons engaged in optometry; the carrying on of the practice of optometry as a sole or main means of livelihood at a fixed place of business within the State for the full period of seven years before the commencement of the Act; or, in the case of a person who has been on active service, three years' *bona fide* practice in optometry before his enlistment. Provision is made for the separate registration of spectacle-sellers.

Town Planning and Development Act (No. 1452). This Act was prepared in conference with Mr. C. C. Reade, late Assistant Secretary of the Garden Cities and Town Planning Association of Great Britain, who was recently appointed Government Town Planner of South Australia. This is the first appointment to such an office in Australia, and the legislation under review is the first Act of its kind in Australia, though several of the other State Parliaments have had Bills under consideration. A Town Planning and Housing Bill framed on principles recommended by Mr. Reade was first submitted to the South Australian Parliament in 1915, but failed to pass. It was remodelled in 1916 and again introduced, but was not acceptable to Parliament. It was entirely redrawn in 1919, the part relating to Housing being omitted and the administrative control being changed from a Central Town Planning Commission to the Government Town Planner. This Bill was introduced during the 1919 session. It did not pass during that session, but was revived during the next session as a "lapsed Bill." It was finally passed in a very much modified form, the part providing for Town Planning By-laws and Town Planning Schemes being struck out. This part contained some of the most import-

ant features of the Bill, and followed the principles embodied in the English Act (9 Ed. VII, c. 44), though there were important variations in details. The practical effect of the amendments was to convert the Bill from a measure providing for town planning into one providing for the control of the subdivision of land for building purposes, though provision is made by the Act (Part III) for town planning in the case of Government towns and townships proposed to be created in newly settled areas.

The Act is divided into four parts, of which Part I is merely preliminary. Part II provides for the creation of a Town Planning Department of the Public Service, the permanent head of which will be the Government Town Planner. The Government Town Planner has the general administration, through his Department, of the Act and the regulations made under it, and is responsible to the Minister of Town Planning. His duties include the preparation of plans and reports, whenever required by the Minister, for or in connection with :

(*a*) Any new town or any extension to any existing town, including any garden cities, garden suburbs, industrial or factory areas, and the like ;

(*b*) The replanning or improvement of any existing town or part thereof, including the subdivision of any land ;

(*c*) The planning or improvement of any public open spaces, reserves, or land set apart for public use or recreation ;

(*d*) The planning or improvement of any settlement in rural or semi-rural areas, including land intended for occupation or use by any discharged soldier or sailor ; or

(*e*) Any matter relating to town planning.

Provision is made for a Central Advisory Board of Town Planning, to consist of the Government Town Planner, the Surveyor-General, a civil engineer, an architect, a representative of the Municipal Association of South Australia, and a representative of the Local Government Association of South Australia. The function of the Board is to advise and assist the Government Town Planner when required to do so by the Minister.

Power is given to local governing bodies to appoint Town Planning Committees, consisting of the Mayor or Chairman of the Council as chairman, and as many other members of the Council as the Council thinks fit to appoint. The function of the Town Planning Committee is purely advisory—namely, to inquire into and report upon any question relating to town planning as the Council may direct, and for this purpose the Committee is given power to call and examine witnesses. Their principal duty is to consider and report upon plans of subdivision submitted to the Council for approval.

In cases where Crown lands are to be used for new towns or townships or extensions to existing cities, towns or townships, the planning and laying out of these lands is to be carried out by the Government Town Planner on behalf of the Crown. In carrying out this duty he is to prepare plans and proposals in consultation with any authority or person controlling the Crown lands to be dealt with, and he is to make adequate provision (both as regards present and future requirements) in such plans and proposals for securing the best economic and social use of such lands and proper sanitary conditions, amenity, and convenience, including suitable provision for traffic, parklands, reserves, sites for public buildings, railways or other means of communication, or for other purposes ; and promoting the development of such lands or any portion thereof for any rural or urban purpose.

The most important provisions of the Act are those dealing with the control of subdivisions and resubdivisions of land. The principle of this legislation is not novel in South Australia, for the Control of Subdivision of Land Act, 1917 (No. 1304), dealt with the matter in a very general way. The present Act makes much more elaborate and detailed provision. It is expressly provided that no plan of subdivision of any land situated within the area of any Council, dividing such land into allotments or otherwise, or showing any road, street, right-of way, or reserve, over such land and no plan of subdivision of any land already so divided or part thereof, or showing any road, street, right-of-way, or reserve over such land, is to be deposited in the Lands Titles Registration Office or in the General Registry Office unless such plan has been certified as approved by the Government Town Planner. Application for a certificate of approval is to be made by the owner of the land or his duly authorized agent, and the Government Town Planner is required to forward one or more copies of the plan accompanying the application to the Registrar-General of Deeds, the Surveyor-General, the Council of the area within which the land is situated, and any public body whose powers or functions will, in the opinion of the Government Town Planner, be affected by the proposed subdivision. These different authorities must, within thirty days of the receipt of the plan, ascertain whether it corresponds with their requirements, and report to the Government Town Planner. The Government Town Planner, after consideration of any objections or recommendations and after taking into consideration various matters specified by the Act to be considered in connection with plans of subdivision, and especially roads, streets, or rights-of-way shown on subdivisional plans, may certify the plan as approved. The Act specifies a large number of particulars which must be shown on the plan, including the method of drainage or disposal of surface water proposed, and the levels and particulars necessary to enable the Council to fix the levels of the new roads and streets and to enable the Commissioner of Sewers to ascertain whether the land comprised in the plan can be advantageously and economically sewered. When the approved plan has been deposited in the Lands Titles Registration Office or in the General Registry Office it is binding upon all persons who at the time of the deposit, or at any time thereafter, have any interest in any of the land comprised in the plan. It is unlawful for any person to reserve, lay out, or open, or for a Council to accept, any proposed road or street, or for any person to subdivide any land into allotments or otherwise, or resubdivide any existing allotment for building or other purpose, or for any person to offer for sale or to sell, or to convey, transfer, or otherwise dispose of, any existing allotment, unless the transaction is carried out by reference to the deposited plan and consistently with its terms and with the requirements of the Act. A deposited subdivisional plan may, however, be altered by means of a plan of resubdivision, which must be submitted to and approved by the Council of the area within which the land is situated. If the Council refuses to approve the plan of resubdivision there is an appeal to the Minister. A plan of resubdivision does not show any new road, street, or right-of-way ; if it is desired to create a new road, street, or right-of-way, the owner of the land must treat the plan as a plan of subdivision and forward it to the Government Town Planner for approval. Where the owner proposes to subdivide a single allotment, he may, instead of applying to the Council, forward his plan to the Registrar-General of Deeds for approval.

Miscellaneous.—The Electoral Code Amendment Act (No. 1446) gives effect to an arrangement made between South Australia and the Commonwealth whereby the Commonwealth Electoral Roll will be used at future House of Assembly elections, and for the first time at the general election which took place in April this year. This can without great difficulty be done, as in both Commonwealth and House of Assembly elections the franchise is adult suffrage. For the Legislative Council of this State the franchise is not so extensive, and for this year's elections to that House the State roll will continue to be used. After that and before the next election in three years' time, it is probable that arrangements will have been finalized for the keeping by the Commonwealth authorities of the electoral roll for that House also, thus avoiding the duplication of services and securing a considerable economy to the State by enabling the State Electoral Department to be abolished. Hitherto Tasmania has been the only State to enter into an arrangement with the Commonwealth for a joint roll.

Marine Board and Navigation Act Further Amendment Act (No. 1416) was an Act passed in the 1919 session, but was reserved for the signification of the royal assent. This has now been given, and the Act is bound with the 1920 Acts. It makes a number of important amendments in the existing law, the more important being the following :

1. The operation coast-trade certificates of masters and mates is extended from purely intra-State traffic to inter-State traffic from any port in Tasmania or on the mainland of Australia between Fremantle and Melbourne.

2. The scope of a third engineer's certificate is extended so as to enable the holder of such a certificate to have charge of the machinery of any steamship of not more than fifty nominal horse power trading wholly within South Australia.

3. The Act provides for a more effective control over explosives and matters connected with explosives, and divides such control between two authorities : as to the landing and shipping of explosives, and the control of Government magazines, the Marine Board is to have authority ; as to all matters concerning the testing and examination of explosives, the licensing of private magazines, and the control of explosives inland, the Chief Inspector of Explosives is to have jurisdiction.

4. The Act adopts the provisions of the English Merchant Shipping Act, 1906, ss. 1, 2, and 3, relating to the loadline and the overloading of foreign ships whilst in South Australia. The provisions in force in South Australia relating to the loadline and which now apply to Australian and British ships will apply to all foreign ships while they are within any port in South Australia, in the same way as they apply to British ships.

River Murray Waters Acts Amendment (No. 1450). The principal object of this Act is to ratify an agreement amending the River Murray Waters agreement entered into on September 9, 1914, and ratified by the River Murray Waters Act, 1915 (No. 1186). The principal agreement was entered into between the States of New South Wales, Victoria, South Australia, and the Commonwealth, and provided for the construction of a system of locks and weirs in the river Murray and the provision of a huge reservoir at Lake Victoria, in New South Wales. The object was to facilitate navigation of the river and to render its waters available for irrigation to a much greater extent than at present. The cost of the works was estimated at £4,663,000. Of this amount £1,000,000 was to be contri-

buted by the Commonwealth and the balance by the three contracting States in equal proportions. The works required to be constructed in each State were to be constructed by the Government of the particular State. A River Murray Commission was provided for, consisting of one representative of each of the contracting parties, which was to take over and control the works when completed. It was found when the construction of the works was entered upon that there were various unforeseen obstacles. For one thing, the increase in the cost of labour and material arising out of war conditions made it obvious that the original estimate of the total cost would be greatly exceeded. Moreover, trouble arose with the workmen engaged by the different State Governments to carry out constructional work on the Murray by reason of the fact that different minimum wages rates prevailed in the different States, and the workmen struck for the rate paid in the State which had the most favourable scale of wages. Again, it was apparent that greater co-operation between the States and greater co-ordination in the carrying out of the works entrusted to the different States was necessary. The result of these and other minor difficulties was that the work was hung up for many months, although there was an urgent demand for its completion in order to render possible large irrigation schemes contemplated for the settlement of returned soldiers and immigrants from Great Britain on the banks of the Murray.

As a result of conference between the Prime Minister of the Commonwealth and the Premiers of the contracting States held in 1920 an amending agreement was drawn up and signed by the representatives of the Commonwealth and of the three States. The agreement declared that it was subject to ratification by the Parliaments of the Commonwealth and the States of New South Wales, Victoria, and South Australia, and was to come into force only when so ratified. The agreement provided for the incorporation of the River Murray Commission and made it " the constructing authority " under the principal agreement in place of the State Governments. Special provision was made for the prevention and settlement of industrial disputes arising in connection with the construction of the works. Such disputes were to be dealt with by a special tribunal, to be constituted by Commonwealth legislation, and the Governments of the three contracting States agreed to take steps to induce their Parliaments to confer upon the Commonwealth power to enact such legislation pursuant to the powers in that behalf contained in the Commonwealth Constitution Act. The Commonwealth also agreed to contribute equally with the State Governments towards the cost of carrying out the works.

Act No. 1450 duly ratifies the amending agreement. The State of Victoria has also passed the proper ratifying legislation. The New South Wales Parliament, however, in making the ratification has amended the amending agreement by striking out clause 27. It is clear that this does not amount to a ratification by New South Wales within the meaning of the agreement, and therefore there is no power at present for the South Australian Government to bring Act No. 1450 into operation.

5. TASMANIA.

[*Contributed by* H. S. Baker, Esq., LL.M.]

1919.

Main Roads.—No. 38 makes further provision for the maintenance of the main roads of the State. It establishes a Main Roads Advisory

Board, consisting of seven members—three to be Municipal Councillors, two to be "motorist members," and two to be Officers of the Department of Public Works. An annual appropriation of £5,000 together with the amount of motor taxes collected and paid into the Treasury, plus certain contributions payable annually by all municipalities in whose areas there are main roads, form the working funds of the Board. The Board is empowered to investigate as to what roads should be declared main roads and to advise the Governor in Council accordingly.

Soldiers' Settlements.—A short Act, passed in 1918, amending the Returned Soldiers' Settlement Act, 1916, and the Closer Settlement Act, 1913, improves in some minor respects the machinery of the earlier Acts and makes special provision for the granting of assistance to returned soldiers who are engaged in share-farming on private lands. A further amending Act passed in the session of 1919 extends the benefits of the Act to nurses, munition workers, and others who served outside Australia during the war and have returned to this State. The same Act empowers the Treasurer to raise by way of loan any sum not exceeding £1,350,000 for the purpose of providing funds for the acquisition of land for the purpose of settling returned soldiers. Inexperienced applicants for land are provided for by a section empowering the Board administering the Act to afford likely applicants an opportunity to learn farming by letting them into possession of farm allotments, provisionally, as tenants at will under the supervision of an instructor; but this provision is only applicable where the farming operations of at least five applicants can be readily and satisfactorily directed by the same instructor.

State Hydro-electric Works, No. 66, passed in 1918, authorizes expenditure up to £127,650 on various works connected with the extension of the State Hydro-electric scheme. Further expenditure on the same scheme to the amount of £545,100 is authorized by Act No. 20 passed in the session of 1919.

Public Service.—Hitherto the State Public Service of Tasmania was subject to the jurisdiction of a Public Service Board, but the Act No. 69 abolishes the Board and substitutes therefor a Public Service Commissioner who is invested with general powers of a disciplinary nature. His jurisdiction does not extend to certain named departments of the Service nor to various senior officers. Any officer dissatisfied with a decision of the Commissioner is given a right of appeal to a specially constituted Board of Appeal. All officers must retire from the Service on reaching seventy years of age unless the Commissioner certifies that it is desirable that they should continue in the service.

Fruit-growers.—No. 72, passed in 1918, is an Act to enable advances to be made by the Government for the encouragement and assistance of the fruit industry. It is amended by an Act of 1919. The advances, which may only be made to a company registered under the Companies Act, 1869, must be for one or all of the following purposes: (1) The purchase of land on which a packing shed or pulping works is to be erected; (2) the erection of packing sheds; (3) the purchase of fruit-grading machinery; (4) the erection or purchase of pulping works; and may be up to 75 per cent. of the value of the land or of the packing shed or pulping works erected or to be erected; or, in the case of a loan for the purchase of grading machinery, up to 50 per cent. of the value of the machinery.

Public Trust Office.—The office of Public Trustee was established in 1912, following closely the New Zealand model. But the experience of

years has indicated the need for various improvements in its machinery and extension of the powers of the Trustee. These are incorporated in the Act No. 38. S. 8 enables the Public Trustee to administer estates of the gross value of £400 or under without taking out probate by filing in the Supreme Court an election so to do. If it subsequently appears that the value of the estate exceeds £600 the Trustee must proceed to obtain probate in the ordinary manner. A new section empowers the Trustee to administer funds raised by public or private subscription, and if necessary to apply to the Supreme Court for directions. The Act further provides for the appointment in certain cases of "advisory trustees" to act in conjunction with the Public Trustee. The trust property remains vested in the Public Trustee. Disputes may be settled by a judge. A later clause provides for the appointment of the Public Trustee as "custodian trustee." In this case the management and control remain in the hands of the Trustees already administering the estate, and the Public Trustee is bound to perform what they direct. The trust property, however, is vested in the Public Trustee as if he were sole trustee. S. 13 adds substantially to his powers in ordinary cases.

Dairy Produce.—No. 40 makes important additions to the principal Act of 1910. The owner of every butter factory is compelled to employ a certain number of milk testers and graders whose duty is to test and grade all milk brought to the factory for manufacture into butter or cheese and determine whether its quality is such as to permit of its manufacture. Regulations may be made under the Act fixing the price to be paid to the customer according to the quality as revealed by the test. It is made an offence to mix different grades of milk for the purpose of manufacture into dairy produce.

Ministerial and Parliamentary Allowances.—The allowance of £200 per annum to members of either House of the Legislature is increased by the Act No. 3 to £300. An Act passed in the same session fixes the payment to Ministers of the Crown at £700 in addition to their allowance as members of the Legislature. An additional £200 per year is provided for the Minister holding the office of Premier.

Dentists.—No. 46 establishes a Dental Board, gives it general disciplinary powers over the dental profession, and fixes the qualifications requisite for admission to practice. Returned soldiers who practised dentistry while on active service are given certain concessions.

Homes.—No. 39 is "an Act to provide homes and advances for homes for persons of limited means." The administration of the Act is placed in the hands of the trustees of the Agricultural Bank, and a Homes Act Fund of any sum up to £70,000 is provided for. The Trustees are empowered to set apart Crown lands for the purposes of the Act and to erect dwellings thereon; but the total cost of land and dwelling is not to exceed £700. The Trustees may let such dwellings or sell them on the rent-purchase system. The Trustees may also make advances up to £700 to be used for the erection or purchase of a dwelling or to discharge an encumbrance; but the sum advanced shall not exceed 90 per cent. of the total value of the property. Advances are to be repaid over a long period of years—from twenty to forty-two years according to the nature of the dwelling.

Act No. 54 empowers the Treasurer to make advances to Municipal Councils to enable them to erect homes for persons in necessitous circumstances.

Osmiridium.—The existence of this precious metal in the State is responsible for the Act No. 49 to regulate traffic in regard to it. No person may buy osmiridium unless he is the holder of a buyer's licence, for which a fee of £5 must be paid. Every licensed buyer must keep an Osmiridium Register Book and observe various prescribed regulations.

Wild Animals and Birds.—The danger of extinction threatening the native fauna has occasioned a drastic measure designed for their protection. The administration of the Act is committed to the Police Force and to such other officers as may be appointed Inspectors. The Act provides: (1) for the declaration of areas as sanctuaries; (2) for the reservation of Crown lands as hunting grounds; (3) for the prohibition of the selling of any animal or bird; (4) for the restriction of the number of animals or birds which may be taken; (5) for the recognition of societies formed for the protection of animals and birds. All the native animals and birds are arranged in Schedules to the Act, some being wholly, some partly protected, and others left unprotected. The use of certain weapons is prohibited, and a heavy penalty is imposed upon anyone importing any fox, wolf, wild dog, or dingo.

Government Insurance.—No. 63 establishes a Government Insurance Office and authorizes it to carry on all classes of insurance business except life insurance.

Marriage and Divorce.—No. 65 was passed through Parliament in the previous session and reserved for the royal assent. The Act repeals s. 14 of the principal Act (copied from the English Act of 1857, s. 27) and enables a husband to present a petition on any of the following grounds: (1) Adultery; (2) desertion for four years; (3) habitual drunkenness and neglect during three years; (4) that at the time of presentation of the petition the wife has been imprisoned for a period of not less than three years and is still in prison under a commuted sentence for a capital crime or under sentence to penal servitude for seven years or upwards; or has within five years undergone frequent terms of imprisonment and has been sentenced in the aggregate to imprisonment for three years or upwards; (5) certain violent assaults upon the petitioner; (6) lunacy of wife for a period of not less in the aggregate than seven years within ten years immediately preceding the filing of the petition and the wife is unlikely to recover.

As to all grounds but the first, the jurisdiction of the Court is dependent upon the husband having been domiciled in Tasmania for a period of two years and upwards at the time of the institution of the suit. This latter provision is applied to all cases of a petitioning wife. The grounds upon which a wife may petition are the same as above set out, except that she may petition on the ground of desertion for two years. A provision follows (the same result appears to have been reached in England by judicial decision, *Wilson* v. *Wilson*, 1920, P. 20) that the Court "may" grant a dissolution of marriage to a guilty petitioner "if satisfied that it is in the interest of all parties that the marriage should be dissolved." The Act concludes with the following provision, which, in view of the decision of the House of Lords in *Lord Advocate* v. *Jaffrey*, 1921, 1 A.C. 146, is of doubtful effect outside Tasmania: "A deserted wife who was domiciled in Tasmania at the time of desertion shall be deemed for the purposes of this Act to have retained her Tasmanian domicile notwithstanding that her husband may have since the desertion acquired any foreign domicile."

Justices' Procedure.—The new Act is an attempt to combine in a

single statute all the earlier statutes relating to proceedings before justices, whether exercising summary jurisdiction or investigating charges with a view to committal. It repeals the Magistrates' Summary Procedure Act (Sir John Jervis's Act) and the amendments thereof and the Magistrates' Criminal Procedure Acts and re-enacts the provisions of the repealed Acts with some modifications of form and arrangement. In addition it repeals the earlier statutes under which a defendant might appeal against a summary conviction or order either by applying for a statutory writ of prohibition or on a case stated by justices or by way of appeal to a Court of General Sessions.

In lieu of all these modes of appeal, the Act provides for an appeal to the Supreme Court or a judge thereof on an order to review, much on the same lines as in the State of Victoria. The appeal extends to questions of law and fact. On the return of the Court to review, the Court may exercise the inherent powers of the Court upon certiorari, prohibition, habeas corpus, mandamus, etc. An appeal lies from a decision of a judge to the Full Court. A section of the Act relating to the powers and duties of justices to require persons to find sureties for keeping the peace has been borrowed from New Zealand Legislation.

1920.

War Service Franchise.—The franchise for the Legislative Council is further extended by the Act No. 4, which confers the vote upon all members of His Majesty's forces who were on active service in the war. It extends to both soldiers and nurses who saw active service in whatever part of the British Empire they were raised.

Adoption of Children.—The Act No. 5 provides machinery, by way of application to a police magistrate, by which an order for the adoption of children under seventeen years of age may be obtained. In the case of a female child such application may be made by: (1) a husband and wife jointly; (2) a married woman alone with the written consent of her husband; (3) an unmarried woman or widow who is at least eighteen years older than the child; (4) an unmarried man or a widower who is at least forty years older than the child. In the case of a male child the same people may apply, but the applicant, if an unmarried man or a widower, must be at least eighteen years older than the child, and if an unmarried woman or a widow, must be at least thirty years older than the child. The magistrate must satisfy himself as to the fitness of the applicant. If the child is over twelve years of age an order cannot be made without the child's consent. Any person adopting a child in accordance with the foregoing provisions may receive a premium in consideration of such adoption, if the magistrate consents, but not otherwise.

S. 8 provides that an order of adoption made under the Act shall confer the surname of the adopting parent on the adopted child, in addition to the proper name of the child; and the adopted child shall for all purposes, civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child, be deemed in law to be the child born in lawful wedlock of the adopting parent. There are three restrictions upon the generality of this rule: (1) The child does not by such adoption acquire any right or interest in any property which would devolve on any child of the adopting parent under any deed or instrument made before the date

of the order, or by virtue of any will made before such date by any person other than the adopting parent, unless it is expressly so stated in such deed, instrument or will. (2) The child takes no interest in property expressly limited to the heirs of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by right of representation. (3) Nor in any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last-mentioned child or otherwise than directly through such adopting parent. The adopting parent is given the full legal status of a natural parent in relation to a child born in lawful wedlock ; and all legal responsibilities and incidents existing between the child and his natural parents are terminated, except the right of the child to take property as heir or next of kin of his natural parents, directly or by right of representation.

All applications made under this Act to a police magistrate are to be heard in the Children's Court.

State Shipping.—The Act No. 3 establishes a Government Shipping Department and gives to the Government all necessary powers as to purchasing, chartering, hiring, etc., such vessels as are required, and all powers necessary to the carrying on of a passenger and goods service. The control of the new Department is given to a General Manager who acts under the Chief Secretary. The General Manager is created a corporation sole with power to sue and be sued, etc. No. 37 passed later in the same Session authorizes the Government to purchase or construct for the Department six steamships at a total cost not exceeding £500,000. The vessels are intended primarily for the coastal trade, and the trade to the Islands in Bass Straits.

Air Navigation.—In order to enable the Commonwealth Parliament to carry into effect the determinations of the international convention on air navigation signed in Paris on October 30, 1919, the Act No. 42 refers this subject to the Commonwealth authority. This is rendered necessary by the fact that the subject is not committed to the Commonwealth by the Federal Constitution.

Mental Deficiency.—This Act is based upon the English Act of 1913, but there are important differences. It is the first piece of legislation to be passed by an Australian legislature dealing with the feeble-minded. Its main purpose may be said to provide means for locating the feeble-minded (who are classified as idiots, imbeciles, feeble-minded persons, and moral imbeciles) and for their appropriate treatment. The administration of the Act is centralized and vested in a Mental Deficiency Board consisting of the Director of Public Health, the Director of the Psychological Clinic to be established under the Act, a Psychiatrist, one member nominated by the Education Department, and one by the University Council. Operating under the direction of the Board, the Clinic will ascertain what children and adults are mentally defective by making mental surveys of schools and other means. An examining authority is established to decide what persons are defective ; it must consist either of two medical practitioners, or of a medical practitioner in conjunction with a psychologist. In these two latter features the Act follows the example of New York, Illinois, and other American States. The methods adopted for the care and treatment of defectives are : (1) Social isolation in institutions. (2) Social assistance or supervision outside institutions. (3) Special instruction in schools. The Board is given power to arrange for

the supervision of any defective not in an institution. The notification clauses are similar to those in the English Act, but they go further, and cover all schools, whether public or private, and institutions for the protection and training of children.

The administration of the estates of defectives is based upon the New Zealand Act of 1911.

Wages Boards.—This Act consolidates the various Acts relating to Wages Boards, and in order to overcome a defect revealed by a recent judicial decision gives the widest scope for the appointment of a Board in relation to any trade—"trade" being defined as "any function, process, industry, business, work, undertaking, occupation, profession, or calling, performed, carried on, or engaged in by an employer"; and also including a group of trades. The earlier Act had been construed by the Supreme Court as extending only to such trades as were carried on in a "factory" within the meaning of the Factories Act, 1910.

Soldiers' Settlement.—Power is given to the Commissioner of Crown Lands, acting upon the recommendation of the President of the Closer Settlement Board, to reserve for the purpose of the settlement of returned soldiers any Crown lands held under lease.

Regulation of Sale of Commodities.—Two further steps are taken in the regulation of commerce by the Chaff Act and the Inflammable Liquid Act. Both these measures regulate in detail the sale of the commodities to which they relate. The last named goes further than the other by regulating the keeping and conveyance of inflammable liquid and carbide of calcium; by providing for the marking of packages, and Government inspection, and for the verification of testing apparatus.

Workers' Compensation.—The Act No. 29 widens the scope of existing legislation in reference to workers' compensation by adopting substantially the provisions as to industrial diseases which are already in force in England and various Australian states.

Judge's Salaries.—The Act No. 48 increases the salary of the Chief Justice to £1,800, and of each of the two puisne judges of the Supreme Court to £1,500.

Afforestation.—The steady depletion of the State timber reserves has led to the passing of an Act which establishes a Forestry Department under an official called the Conservator of Forests, and gives it exclusive control and management of: (1) All matters of forest policy. (2) All State forests and timber reserves and forest products of other Crown lands. (3) The planting or thinning of forests, and the making, laying out, or maintaining of plantations and nurseries, and the distribution of trees therefrom. (4) The granting of all permits, licences, and exclusive forest permits under the Act. (5) The enforcement of the conditions of timber concessions, timber leases, exclusive forest permits, licences, and occupation permits. (6) The collection and recovery of all rents, fees, royalties, charges, and revenues of the Department. (7) The administration of the Act generally. The Act directs that a classification shall be made of the forest lands of the State for the purpose of determining which are suitable to be permanently dedicated as State forests, and which to be reserved from sale as timber reserves, and that within seven years from the commencement of the Act there shall be in Tasmania an area of approximately 1,500,000 acres of land dedicated as State forests. Certain rights in respect of such State forests and timber reserves may be granted to applicants in the form of: (1) Forest permits for any period not exceeding

fifteen years, giving the holder the right to take such timber and forest products as are mentioned therein. (2) Occupation permits for any period not exceeding fifteen years, giving the holder the right to establish saw-mill sites or timber depots or to construct roads or tramways. (3) Licences for any period not exceeding three months, authorizing the licensee to remove forest produce specified in the licence. (4) Forest leases for any period not exceeding fourteen years, for grazing, agricultural, or other purposes, provided such purposes are not opposed to the interests of forestry. Provision is made for the registration of all saw-mills. One-half of the gross revenue of the Forestry Department is to be applied for the purposes of forestry administration.

Wheat.—The shortage in the 1920–21 crop of wheat is responsible for the Act No. 63, which constitutes a special Wheat Board to advise the Minister for Agriculture, and gives to the Board wide powers in respect of the handling and marketing of all wheat supplies. The whole of the 1920–21 harvest is to be delivered to the Minister by holders, and sold by the Minister within the State. The Minister is also empowered to purchase wheat from abroad for consumption in Tasmania.

Companies.—The Act No. 66 repeals all earlier legislation relating to Companies, and is virtually a copy of the English Companies (Consolidation) Act, 1908.

Small Debtor's Relief.—This measure, the full title of which is "An Act to amend the Debtor's Act, 1870, and to extend to poor debtors the benefits of the Bankruptcy Law, and for other purposes," provides for the making of an "instalment order" in favour of any judgment debtor who is unable to pay the full amount of the judgment debt, and whose whole indebtedness does not exceed £50. The debtor must set out in his application for such an order a list of his creditors, who are notified by the Registrar of the date of hearing, and may attend and prove their claims. The debtor is examined; and an order, when made, operates as a stay of all proceedings against the person or property of the debtor in respect of any debt which is admitted by the Court, except by leave of the Court.

6. VICTORIA.

[*Contributed by* His Honour Judge Zichy-Woinarski, K.C., *and* W. Harrison Moore, Esq., C.M.G.]

Fourth Session of Twenty-fifth Parliament: Acts passed—34.

First Session of Twenty-sixth Parliament: Acts passed—35.

Commonwealth Powers (Air Navigation) (No. 3108).—In 1919 an International Air Convention was signed on behalf of His Majesty at Paris. The Convention, like the Treaties of Peace, was one to which "the British Empire" was a party, and like those treaties it was signed by plenipotentiaries "in respect of" the Dominions (other than Newfoundland) and India. A permanent international committee under the League of Nations is constituted, as to which there are interesting matters bearing upon the unity of the Empire and the "status of the Dominions" (see Cd. 670 and a letter of Prof. Berriedale Keith in *The Times*, Sept. 24, 1919). Various obligations are undertaken under the Convention itself, and others may arise out of the proceedings of the Committee; and these in many cases can only be carried out through legislative action.

Then the position arises in federal Governments, such as the United States and the Commonwealth of Australia, that the legislative powers of the Government which assented to the Treaty may not be adequate to carry out the obligations—some of the matters may be within the exclusive sphere of the State Parliaments. In the United States there is much difference of opinion as to whether the powers of Congress to legislation for the execution of treaties extends beyond those matters which are international *per se* (as, for instance, territorial boundaries) and those which are ordinarily domestic but which for one reason or another have been made the subject of international agreement (*e.g.* conditions under which industries are carried on). See *Peterson* v. *Iowa*, 245, U.S. 170; *Missouri* v. *Holland*, 252, U.S. 416; and 33 *Harvard Law Review*, p. 281.

In Part XIII., "Labour," of the Peace Treaty, the question appears to be faced by the provision of Art. 405 under which members merely undertake to bring conventions before "the authority or authorities within whose competence the matter lies for the enactment of legislation or other action," so that in countries such as the United States or Australia the Member-Government is not pledged to carry through measures for the enactment of which the legislative power belongs to another authority, viz. the State Legislature.

In Australia the constitutional difficulty is met, if the States are willing, by a power in the Constitution for the States Parliament to refer any matter to the Commonwealth Parliament and thereby reinforce the legislative power of that body. At a Conference of Commonwealth and State Ministers held in 1920, it was resolved to make use of that power of reference in the case of the International Air Convention; and the Act now under consideration was passed by the Parliament of Victoria to carry out that agreement. Accordingly the Act refers to the Commonwealth Parliament "any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties" in the Convention, or arising under any modification thereof. The Act also refers to the Commonwealth Parliament the matter of "intercourse by aerial navigation between the State of Victoria and any other country or any State of the Commonwealth."

Discharged Soldiers' Settlement (No. 3061) amends the Principal Act and extends the power to borrow money for the purpose of carrying on the settlement on land of discharged soldiers from the present sum of £8,000,000 to the sum of £14,000,000. In 1917 the power to borrow was £2,250,000, which was raised in 1918 to £4,000,000 and in 1919 to £8,000,000, and is now raised to £14,000,000. Nor is it considered likely that this last sum will prove adequate. Soldier settlement is progressing most satisfactorily, 5,887 soldiers have been already settled; 16,462 soldiers have applied for qualification certificates, and certificates have been granted to 12,380 of them, and the Board has enough land in hand to settle about 2,230 more. The Principal Act empowered the Board to give soldiers up to £2,500 worth of land, and that was increased by the previous amending Act to £3,000. Actually the average cost of land was only about £2,000, because Crown lands were to some extent available. Advances for stock and for improvements are also a drain on the funds of the Board, but the main or heavy drain on funds is for the purchase of land. A small defect in the Principal Act is amended in s. 3. The Board could advance up to £625 for stock and improvements to soldiers who took up practically any class of land, but it was found that where

land upon lease from the Forests Department was taken there were legal difficulties under the Forests Acts, and these difficulties are now removed. S. 4 provides for an increase in the salaries of the Chairman and members of the Board.

Mental Treatment (No. 3062).—Under earlier existing Acts of the years 1915 and 1919 soldiers and sailors suffering from mental disorder could be treated and their estates managed by the Lunacy Department without the formula of previously declaring them to be lunatic. Upon demobilization and discharge from the military and naval forces, such cases came under the ordinary law, and there existed no power to treat them still as if members of the military or naval forces and in wards apart from the ordinary civilian patient, etc. This Act effects that purpose and preserves for these unfortunate sufferers the status that the Mental Treatment Acts of 1915 and 1919 were designed to give, and enables them now to be dealt with as heretofore without declaring them lunatic, and all the benefits of the Lunacy Act of 1915 with such alterations and modifications as may be necessary are to apply to such persons as if they had been duly certified as insane and were legally received into or detained in any hospital for the insane. The Governor in Council is empowered to proclaim as an institution to be exclusively used for the reception, care, and treatment of such persons any building or part thereof provided by the States or Commonwealth.

Municipal Celebrations and War Memorials (No. 3086).—During the visit of His Royal Highness the Prince of Wales in the year 1920 certain municipalities had applied out of their municipal or town fund moneys in connection with the celebrations, and this Act authorizes and validates such expenditure and includes in that authorization and validation the city of Melbourne and the city of Geelong. It gives power too for the Council of any municipality (including that of Melbourne and of Geelong) to apply or to have applied out of the municipal or town fund of the municipality any sums of money approved by the Council for or towards any memorial (whether within or without the municipal district) heretofore or hereafter instituted or founded in commemoration of the recent war or of persons who served therein or of anything connected therewith.

Marine (No. 3072).—This Act amends the Principal Act so as to provide that the restrictive provisions of s. 76, subs. 2, dealing with the qualifications for a Port Philip pilot might be dispensed with in the case of an applicant having war-time service to his credit and otherwise able to prove his fitness to act as a pilot to the satisfaction of the Marine Board.

Public Service (No. 3059).—This Act establishes new scales of salary for officers under the Public Service Acts in place of those contained in the Act of 1915. There is little change in the maximum and minimum rates of pay attached to the highest administrative positions, and £1,000 per annum is still the maximum save in a few cases, as where the offices of Under-Treasurer and the Director of Education are assigned £1,250, while in the Professional Division the maximum is raised from £1,200 to £1,500. It must be remembered that there are a number of positions demanding special qualifications which are outside the Public Service Acts altogether, for several of which much higher salaries are paid. The legislative Act went along with a reclassification of officers, so that in a great many cases officers benefited in a double way.

State Electricity Commission (No. 3104).—This Act amends the Principal Act of 1918 (No. 2996) in various particulars. Amongst other things it provides for a Chairman of the Commission who shall give his whole time to the work of the Commission and receive a remuneration of £3,000 a year, and enacts "that the first person to be so appointed shall (if he is willing to accept the office) be Lieutenant-General Sir John Monash, G.C.M.G., K.C.B." (Sir John Monash is a distinguished and experienced engineer). Provision is also made for establishing a township at Morwell, the principal seat of the Commission's operations, and the preparation of plans for this purpose. The scheme extends to laying out the township, acquiring and erecting houses and maintaining them in repair, and laying out and beautifying any land vested in or controlled by the Commission or otherwise making it suitable for recreation purposes or for any public purpose (s. 11).

Wheat Marketing and Transportation (No. 3076).—This is an Act which in relation to the wheat harvest of 1920–21 makes similar provision for the marketing and transportation of the crop through a "Government pool" as has been made in the other years following the outbreak of the War. The scheme involves the co-operation of the several State Governments and provides also for the possibility of the Commonwealth becoming a party. The nature of these schemes has already been considered in previous reviews of legislation.

State Savings Bank (No. 3098).—This Act authorizes the State Savings Bank Commissioners, which have for long made advances to settlers under the Crédit Foncier system, to make advances to companies for the purposes of various undertakings in connection with industries in country districts. The Primary Products Advances Act, 1919, having sanctioned Government advances to companies for various purposes in connection with undertakings as defined under that Act, the present Act extends the undertakings which may be assisted to "any factory, work-room, store, or other establishment for the purpose of manufacturing, producing, preparing, improving, preserving, freezing, packing, or storing any commodities for sale which is situated outside the metropolis and is not included within the interpretation of 'undertaking' in s. 2 of the Primary Products Advances Act, 1919, or of 'fruit works' in s. 2 of the Fruit Act, 1917." The scheme of advances and repayment follows that of Acts Nos. 3038 and 3068.

Fallowing Advances (No. 3052).—To enable cultivators who would not, without assistance, be able to fallow their land between July and November 1920, the Government may make advances "by way of loan of such quantity of fodder as the Minister thinks fit." The advance may be in kind or by order to some person to supply to the cultivator the value mentioned in the order. "Fallowing" is defined as "the ploughing of land during the period from July to November 1920 as a first preparation for sowing such land with wheat or oats during the period from March to July 1921, and the treatment of such land by harrowing, cultivating, or otherwise to the extent necessary to enable it to be thoroughly prepared for the growing of a wheat crop or oat crop"; and "fodder" means food for horses employed in fallowing. Advances are secured by mortgage over the farm or a licence lien or lien on the improvements thereon, and also if the Department administering the Act thinks fit a preferable lien under Part VII of the Instruments Act, 1915, on the crop of the next ensuing harvest. If the land or improvements are already encumbered,

the consent of the encumbrancer is ordinarily necessary to the advance, which then takes precedence of the encumbrance. But where the consent of the encumbrancer is not obtainable, the Department may advance on the security of a preferable lien over the crop of the next ensuing harvest. By s. 10, notwithstanding anything in any Act, mortgage, lease, or agreement, no person unless he first pays to the Department the total amount due by the cultivator, may seize or distrain any crop for the period during which the preferable lien given by this Act is in force, or during the same period take any proceedings by way of ejectment against the cultivator.

Fruit (No. 3069).—This Act amends the Fruit Acts, 1915 and 1917, in respect to advances by the Government Trusts appointed for Cool Stores Areas.

Primary Products Advances Act (No. 3068).—This Act amends the Act of 1919 so far as the same relates to an application for loans, and to the repayment of loans made by the Government to companies formed for such undertakings as the establishment and carrying on of abattoirs and freezing works, cool storage for fish, factories for the manufacture of canned fruit, dried fruit, or jam, flax mills, tobacco curing sheds, and fruit works [see Act No. 3038 (of 1919) s. 2].

Farm Produce Agents (No. 3082).—No person is to carry on the business of a farm produce agent unless licensed. Licences are obtained by application to a Court of petty sessions which has to be satisfied that the applicant is a fit and proper person. The licence has to be renewed annually and there is an annual licence fee of twenty shillings. Licences may be cancelled for any offence under the Act or if for any other reason the Court considers that the licensee is unfit ; and a licence is to be deemed to be *ipso facto* cancelled if the agent is convicted of an indictable offence. Among offences under the Act are : (1) purchase by the agent of any commodity entrusted to him for sale, without disclosing that he is the purchaser : penalty £50 with an account of all profits ; (2) failure to supply within ten days an account sales note in the form prescribed by the Act, or making a false return ; (3) failure to apply the proceeds of sale as prescribed by the Act, including failure to pay the balance due into a trust account at a bank.

Land (No. 3105).—This Act contains a number of miscellaneous provisions amending the Land Act, 1915 (No. 2676), and an amending Act (No. 2770). There are several provisions applicable to the case of soldiers. S. 3 allows postponement for three years of payments in respect of any selection purchase allotment disposed of to a discharged soldier under a residential lease, subject to the fulfilment of covenants and to the land being satisfactorily weeded. S. 12 provides that grazing licences may be granted to returned soldiers for fourteen years instead of seven years as in other cases ; and s. 13 permits a soldier holding under such a grazing licence to select a selection purchase allotment. The Land Act, 1915 (No. 2770), s. 8, having provided for a suspension of covenants or conditions in case of lessees or licensees on naval or military service during the war, s. 20 of the present Act permits waiver of compliance with a covenant or condition as to residence or occupation in the case of a licensee or lessee who was unable to comply with such condition or covenant owing to the absence of a relative on war service. By s. 21 the Governor in Council may in the case of purchasers of Crown land who were absent on war service forgo claims to interest in respect of the payments

due under such purchase accruing while such purchaser was engaged on war service.

Among other provisions of the Act is one authorizing the Government to declare areas of Crown land as proper subjects for improvement before alienation or disposition, and thereupon to provide roads and bridges and drainage in such area. In every such area the Closer Settlement Board may, either before the land has been taken up or afterwards, clear, drain, fence, or otherwise improve such land (s. 4). Expenses incurred under this section are to be deemed a "special advance" to the settler; and the work may by arrangement be carried out by the settler under advances of money made to him by the Board.

Country Roads (No. 3057).—This Act authorizes the Treasurer to raise for the Country Roads Board an additional £250,000 for each of the two financial years commencing respectively July 1, 1920, and July 1, 1921—the former grant of £2,000,000 having been exhausted. Inasmuch as municipalities are by law required to provide half the maintenance money and half the construction money towards the works of the Board, and that in certain cases municipalities have not paid such moiety, this Act empowers the Treasurer to deduct from moneys due to the defaulting municipalities out of Consolidated Revenue or on account of any fees, fines, penalties, etc., such moiety and with interest at the rate of £6 per cent. per annum. One other provision relates to the obtaining of stone, gravel, and other road-making material. Under the Principal Act the Board had power to enter private property for the purpose of securing material for making or maintaining roads; but a difficulty was found where such material was not adjacent to the roads, and the present Act gives power to the Board to convey such road material over intervening property.

Factories and Shops (No. 3093).—This Act makes easier the appointment of Wages Boards. Originally such Boards were created in four of the most sweated trades, and were created under the authority of Statute. Thereafter Parliament passed an Act under which Wages Boards could be created for other trades on the adoption of resolutions in both Houses of Parliament, and that has been the procedure in operation until the passing of this present Act. The defect in that procedure was that Wages Boards could only be created while Parliament was in session, and when in any trade trouble suddenly arose, the remedy of a Wages Board required this legislative sanction. The present Act enables the Governor in Council to appoint Wages Boards without resolutions of both Houses of Parliament. Under the previous procedure whenever it had been found necessary to extend or otherwise amend the powers of a Wages Board an amending resolution of both Houses of Parliament was required; under the present Act the Governor in Council is now entrusted with that power.

Factories and Shops (No. 2) (Act No. 3112) fixes the hours for the closing of shops within the Metropolitan District for the sale of fresh uncooked meat, and enacts (1) that such shops shall be closed and kept closed in every week:

(1) On Monday, Tuesday, Wednesday, Thursday, and Friday until the hour of half-past seven o'clock in the morning;

On Saturday until the hour of six o'clock in the morning.

(2) That all such shops shall be closed in every week:

On Monday, Tuesday, Wednesday, and Thursday from the hour of five o'clock in the evening;

On Friday from the hour of six o'clock in the evening ;

On Saturday from the hour of half-past twelve o'clock in the afternoon ; but may be kept open until eight o'clock in the evening on the day immediately preceding a public holiday when such shops are closed for the whole of such public holiday.

Second-hand Dealers (No. 3064).—This Act modifies the requirements of the Principal Act when a licence is sought to be renewed and not obtained for the first time. By the Principal Act a person who desired a licence to trade as a second-hand dealer was required to give a written notice of his intention to apply therefor, and to lodge with the police a certificate of five householders residing in the district where the applicant proposed to carry on his business, and this notice and certificate had to be lodged eighteen days at least before the application was to be made. One who required a renewal of a licence had to repeat this procedure, and the present Act dispenses with that, and the licensee now has to apply for renewal at the Court of petty sessions nearest to his place of business not less than fourteen days before the expiry of his licence, and give notice also not less than fourteen days to the police ; and if the Court of petty sessions is satisfied that the licensee has committed no breach of the Acts and is a fit and proper person to continue to hold the licence, it may renew the licence for a further period of twelve months.

The Principal Act also required a dealer who bought any second-hand article to hold it for four days, and an exception is made by the present Act to this in the case of goods bought by the dealer at public auction.

Housing and Reclamation (No. 3088).—This is an important Act "relating to the providing of dwellings for persons of small means and for the reclamation of and improvement of insanitary, low-lying, or overcrowded areas." Under Part I the Commissioners of Savings Banks are empowered to acquire dwelling-houses or to acquire land and to erect dwelling houses thereon at a total cost in the case of each such dwelling of not exceeding £800, for the purpose of providing dwelling-houses for "eligible persons," *i.e.* persons not the owner of a dwelling-house and not in receipt of an income of more than £400 a year (s. 2). The price to purchaser is not to exceed the capital cost to the Commissioners. The purchaser may be admitted to occupation as a weekly tenant, paying rent at such amount as has been fixed. The rent paid is to be appropriated by the Commissioners between interest on the amount of capital cost outstanding from time to time and the payment of the capital cost (s. 8). The period for the payment of the capital cost by any purchaser is not to exceed twenty-eight years. The title to the property remains in the Commissioners until at least 15 per cent. of the purchase-money has been paid, when the purchaser may obtain a transfer subject to mortgage (s. 8). Discretionary powers as to payments are given to the Commissioners to meet cases of hardship. A purchaser from the Commissioners may not without their permission let, sublet, or mortgage the premises (s. 14) so long as any part of the purchase-money is unpaid ; and during the same time, no transfer of the property shall have effect unless it (*a*) arises through the question of any law relating to insolvency ; (*b*) is made to a devisee by a person acting in the capacity of executor or administrator to a purchaser or borrower ; (*c*) is made with the consent in writing of the Commissioners (s. 16).

Part II of the Act deals with housing and reclamation schemes. Municipalities are empowered to enter upon housing and reclamation

schemes with the assent of the Governor in Council. The local authority prepares a general plan, of which public notice is to be given, and objectors may petition the Governor in Council against its adoption, or for its amendment. Under any such scheme when approved land may be taken compulsorily, buildings may be demolished, roads closed or opened out, and lands laid out for gardens and recreation. The cost of dwellings to be erected is not to exceed (together with the land) a capital cost of £800, and such houses are to be available only for the "eligible persons" above described, and are to be disposed of on terms similar to those applicable to dwellings provided by the Savings Bank Commissioners. For the purposes of any housing scheme a municipality may, with the approval of the Governor in Council, advance any sum not exceeding £100,000, or in the case of the city of Melbourne £300,000, and may increase the general rate to an extent not exceeding 6*d*. in the pound notwithstanding any statutory limit to such rate. The municipality must in each year prepare a separate balance sheet and statement of accounts showing the operation of the scheme.

"Reclamation schemes" relate to the reclamation and improvement of any insanitary or low-lying or over-crowded area in the municipal district, or the improvement of any particular area in the municipal district where any land abuts upon any street or way less than 30 feet wide" (s. 41). For such schemes a municipality may, with the consent of the Governor in Council, borrow a sum not exceeding £50,000 (in the case of Melbourne £300,000). In connection with any reclamation scheme, it may impose a betterment charge upon all lands within the "betterment area" "in respect of or in consideration of any substantial and permanent increase in value which it is clearly shown has been derived from the reclamation effected under the betterment scheme" (s. 53). The charge is one-half of the enhanced value, after making all proper deductions. The provisions of the Act on this subject of betterment, including the mode of determining the enhanced value, are in the main adopted from 58 and 59 Vict., c. cxxx—London County Council (Tower Bridge Southern Approach) Act.

Rating on Unimproved Values (No. 3060).—This Act repeals the Act of 1919 (No. 3025), and re-enacting it in part contains additional provisions as to the measures of valuation to be taken by municipalities in cases where the unimproved capital value has been adopted as the basis of rating.

Divorce (Insanity) (No. 3049).—This Act adds to the existing grounds for a divorce or a judicial separation the new ground that (1) the respondent is a lunatic or person of unsound mind who has been before or after the commencement of the Act confined in an asylum, etc., for five years out of six in the aggregate before the filing of the petition, and (2) is unlikely to recover. A copy of any petition for a divorce or a judicial separation on this ground must be served on the Master in Lunacy, sealed with the seal of the Court, and a copy of the citation also served on him.

Trusts (No. 3109).—This Act amends the law relating to the banking accounts of trustees so as to provide that where there are two or more trustees they may direct the bank to honour cheques or other negotiable instruments signed by one of the trustees, and the banker recognizing the authority of the trustees in that way is not to be deemed privy to a breach of trust. S. 3 is as follows:

(1) Where there are two or more trustees of a trust and the trustees by writing under their hands authorize a banker:

(*a*) to pay bills of exchange drawn upon the banking account of the trustees by the trustee or trustees named in that behalf in the authority; or

(*b*) to recognize as a valid indorsement upon any bill of exchange payable to the order of the trustees the indorsement thereon by the trustee or trustees named in that behalf in the authority;

The banker acting in pursuance of such an authority shall not be deemed privy to a breach of trust on the ground only of notice that the persons giving such authority were trustees, or that the instrument (if any) by which the trust was created did not contain any express power to give such authority.

(2) This Act:

(*a*) Applies to a trust whether created before or after the commencement of this Act;

(*b*) Shall not affect any question of the liability of any trustee for breach of trust in so authorizing a banker as aforesaid; and

(*c*) Save as aforesaid, applies only if and so far as a contrary intention is not expressed in the instrument (if any) by which the trust is created and shall have effect subject to the terms and provisions of that instrument.

Companies (No. 3073).—This Act amends the law as to Proprietary or Private Companies and to certain associations not for profit. Under the Principal Act proprietary companies can be formed which are free from certain obligations imposed upon ordinary public companies and the present Act copies 3 and 4 Geo. V., c. 25, s. 1, and provides that where a company infringes the provisions on which it is entitled to registration as a proprietary company it shall cease to be entitled to the privileges and exemptions conferred on a proprietary company; but the Court upon being satisfied that failure to comply with the conditions was accidental or owing to inadvertence or to some other sufficient cause may grant the company relief from the consequences. Again, by the existing law the number of members of a proprietary company stood limited to fifty, exclusive of persons who are in the employment of the company, and the present Act, in the interest of the system of profit-sharing, extends that and allows the number of members in a proprietary company to be fifty, exclusive of the persons who are in the employment of the company or who became shareholders while in the employment of the company. The Act requires, too, that proprietary companies shall send such particulars to the registrar as will show clearly whether they have complied with the law as to the number of shareholders being limited to fifty exclusive of employees and ex-employees.

The Act also removes restrictions upon proprietary companies registered under the Companies Act, 1896, which did not exist in the case of proprietary companies registered since the year 1910, and it provides that a proprietary company of the former class can, after passing a special resolution dealing with certain restrictions, get a certificate of incorporation under the Principal Act of 1915, and thereby become on the same footing, as to the number of shareholders, as other proprietary companies.

Lastly, the Act amends s. 27 of the Principal Act and entitles certain associations which have already been formed but were not formed for profit to be registered without the use of the word "limited" after the name.

Instruments (No. 3071).—This Act enables powers of attorney by corporations to be filed by the filing of an attested copy in lieu of the filing of the original, and upon verification by an affidavit of some credible person.

Poisons (No. 3113).—This Act amends the Principal Act and also adopts for Victoria many of the provisions of the *Dangerous Drugs Act*, 1920 (10 and 11 Geo. V., c. 46), which was passed to give effect to the anti-narcotic provisions agreed to by those signing the Versailles Peace Treaty. Part I is an amending part. Under the Principal Act doctors and chemists were permitted to sell poisons by virtue of their statutory qualifications, and country storekeepers were permitted, in towns where there was no chemist, to obtain certificates as dealers in poisons. The present Act provides (s. 4) that no person other than a pharmaceutical chemist or a person holding a certificate as a dealer in poisons under the Principal Act shall sell any of the poisonous substances set out in detail in the First Schedule (*e.g.* fly-poison papers, vermin poison, sheep dips, etc.) unless he holds a licence from the Pharmacy Board so to do, and among the conditions to be fulfilled by a licensee is one that he shall produce a certificate from a medical practitioner and a police magistrate that he is a fit and proper person.

Part II gives effect to the agreement to pass legislation embodying the anti-narcotic provisions of the Treaty mentioned. As the Commonwealth of Australia has the power already to deal with the importation of narcotic drugs, the present Part II deals only with the inland sale, use, and manufacture of such drugs as:

(1) Morphine, cocaine, ecgonine, and diamorphine (commonly known as heroine), and their respective salts, and medicinal opium (as defined), and any preparations, admixtures, etc.

(2) Chloral hydrate, ergot, paraldehyde, diethyl-barbituric acid, sulphonal and its homologues; and any salt compound or derivative.

(3) Any other substance or preparation added by Proclamation.

The Governor in Council is empowered (s. 10):

(1) On the recommendation of the Pharmacy Board to make regulations for the control of the manufacture, sale, possession, and distribution of such drugs and in particular:

(*a*) Prohibiting the manufacture except in premises licensed for the purpose or by pharmaceutical chemists on their premises;

(*b*) Prohibiting the manufacture, sale, or distribution except by doctors, pharmaceutical chemists, persons holding certificates as dealers in poisons under the Principal Act, or authorized under regulations under this Part;

(*c*) Regulating the issue by doctors of prescriptions containing any such substance or preparation and the dispensing of any such prescriptions;

(*d*) Requiring those engaged in manufacture, sale, or distribution to keep books and furnish information as prescribed;

(*e*) Exempting from the provisions of this Part any substances or preparations which by their nature are not capable of being used in evasion of the provisions of this Part;

(2) To add on the recommendation of the Pharmacy Board any new derivative of morphine or cocaine, etc., to the list of drugs specified.

Ss. 11 and 12 deal with the issue of licences or authorities to be issued or granted by the Chief Secretary on the recommendation by the Pharmacy Board and for offences and their punishment.

Part III amends and modifies certain provisions of the Principal Act. The Governor in Council is empowered to add substances to the list of preparations set out in the aforesaid First Schedule (s. 13).

Special restrictions are placed upon the retail sale of " patent drugs," viz. acetanilide ; adrenals (extracts and preparations of) ; oil of tansy ; pituitary extract ; any serum or vaccine for human use ; thyroid gland (preparations of), and no person other than a pharmaceutical chemist or a person holding a certificate as a dealer in poisons may sell by retail a patent drug, and all sellers must comply with the regulations thereupon.

It is made a criminal offence to forge or alter, or utter when forged or altered, any prescription of a medical practitioner, including any narcotic ; or by false representation, verbal or in writing, or by conduct, to obtain from any medical practitioner any prescription, including any narcotic (s. 16).

There are other minor provisions in the Act, but they only make for the better administration of the existing law.

Juries (No. 3095).—This Act amends the Principal Act by directing the Sheriff to draw the jury panel at the time and place appointed by him in the presence of one or more of his senior officers if available—and members of the public may no longer be present thereat.

To lessen the practice of " whispering " to jurymen the Principal Act is altered so that in any criminal inquest, a copy of the panel from which the jury are to be struck may be inspected and a copy obtained at a cost of 2*s*. on the day before the precept is returnable and after that day until the panel ceases to be operative—the Principal Act permitted such inspection and the obtaining of the copy three days before the precept was returnable, and so gave a greater opportunity to the evil minded to defeat the ends of justice. In civil inquests the copy of the panel from which the jury are to be struck may be inspected and a copy obtained at a cost of 2*s*. three days before the return day and after that day until the panel ceases to be operative.

Another amendment is this : the Act increases the remuneration paid to jurors in civil and criminal inquests from 7*s*. a day to 12*s*. a day for the first three days, from 10*s*. to 15*s*. for the next three days on the same case—thereafter £1 a day.

Unauthorized Documents (No. 3100).—This Act amends the Principal Act, which was designed to stop the use of documents purporting to be documents issued from Court and to frighten people into paying claims —a debt collector's dodge. Doubts have arisen whether the printer, publisher, or seller of such documents could be convicted of an offence against the Principal Act and such doubt is removed by the present Act which in terms makes it illegal to print, publish, or sell or to offer or exhibit for sale or to cause to be printed, published, or sold or offered or exhibited for sale any such document.

7. WESTERN AUSTRALIA.

[*Contributed by* F. L. Stow, Esq., LL.D.]

In the fourth session of the tenth Parliament of Western Australia fifty-two Acts were passed. Of these, twenty-four are reviewed below, the remainder being Acts dealing with the ordinary annual appropriation or taxation, or matters of a purely local character.

Time of Registration Extension.—No. 2 is an Act of interest, as it is a reminder of what is, and what is hoped will continue to be, a unique incident in the history of British communities, namely, a strike in the Civil Service. This occurred in July 1920, and, the functions of Government being for some time suspended, documents could neither be registered nor stamped—hence this Act.

Friendly Societies (No. 3).—This Act confers on Friendly Societies the power to foreclose mortgages.

Parliament (Qualification of Women), (No 7).—This Act qualifies women for Parliament. It may be of interest to state that, at the election held in March 1921, the Minister who introduced this measure was defeated by a woman. This is the first time that a woman has been elected to Parliament in Australia.

Carriers.—No. 8 is a mere adoption of the English statute of 1830, with a few modifications.

Health.—No. 12 merely continues the provisions relating to venereal diseases already reviewed in this *Journal*.

Public Service Appeal Board (No. 14).—This Act is the most important result of the strike referred to above. It is a distinct advance on the preceding legislation. It empowers an Appeal Board to fix not only the range of salary which shall attach to an office, but also to determine the precise salary which shall be paid to the officer.

The Board is also empowered to determine the right to superannuation allowance of civil servants on retirement; though it is only those persons who entered the service prior to 1904 who have any right to superannuation allowance at all, because in that year it was enacted that no persons thereafter appointed to the service should be entitled to any superannuation allowance.

The Acts regulating the Public Service do not in general apply to the Education Staff; but as the members of that Staff took a very prominent part in the strike, the benefit of the Appeal Board is extended to them.

The Board consists, in cases when the ordinary Civil Service is concerned, of a judge, a member nominated by the Governor, and a member elected by the Civil Service Association. When the Education Staff is concerned, the third member is elected by the State School Teachers' Union, the other members being the judge and a person (who is intended to be different from the person nominated to sit when the Civil Service is concerned) nominated by the Governor. When both the Education Staff and the Civil Service are concerned, the judge is to sit with the four other members.

Having granted the service so much, the Act administers a gentle rebuke in s. 15 by declaring that if any public servant takes part or does anything in the nature of a strike he shall be guilty of an offence and forfeit the privileges he enjoys, and be liable to a penalty of £10.

Guardianship of Infants (No. 15).—This is an Act to amend the law

relating to the guardianship and custody of infants and to assure to the widow or widower and family of a testator an adequate maintenance from the estate of the deceased.

This Act reproduces the provisions of the English Guardianship of Infants Act, 1886, but it contains, in addition, a novel provision to the effect that if any person disposes of his or her property by will in such a manner that the widow, husband, or children of such person is or are left without adequate provision the Court may order that such provision shall be made out of the estate of the testator in favour of such widow, husband, or children as the Court thinks fit.

Prices Regulation (No. 16).—This is an amendment of the Act of 1919 reviewed in the preceding number of this *Journal*.

The most important provision in the Act is to the effect that the Price-fixing Commissioners, if they are satisfied:

(*a*) That a person has in his custody or under his control any food-stuff or necessary commodity and has failed, on demand and tender of the fixed price, to supply any particular person with such food-stuff or necessary commodity; or

(*b*) That any food-stuff or necessary commodity which in their opinion should be distributed for public use is being withheld from sale,

May recommend to the Governor that such food-stuff or necessary commodity be forfeited. Such forfeiture is, however, not absolute, but the offender is paid the proper price of the commodity of which he is deprived, subject to the deduction of any penalties or costs incurred by him.

Innkeepers.—No. 19 is a reproduction of ss. 1, 2, and 4 of the English Innkeepers Act, 1863.

Building Societies (No. 20).—This Act follows the English legislation on the subject. Just as there was in England the Building Societies Act, 1836, providing for the registration of unincorporated building societies, so here we had a similar Act (27 Vict., No. 7). This earlier Act is repealed, but the repeal is declared not to affect the registration of any society under the repealed Act. The result is apparently that, though no new societies can be registered under the old Act, the incorporated societies can continue as before. Provision is, however, made for their becoming incorporated under the new Act; but this course is optional.

Prevention of Cruelty to Animals (No. 21).—This Act repeals the Act of 1912, and substitutes other provisions which render the law on this subject more severe and far-reaching. Some of the provisions of the Act will be found in the English Act of 1911, but there are many which find no place there.

The Act extends to all domestic and captive animals and includes not only quadrupeds and birds, but fishes and reptiles in a state of captivity.

New offences are created such as:

(*a*) Failure to supply an animal with proper and sufficient food or water or sufficient protection against inclement weather;

(*b*) The needless slaughter or mutilation of any animal;

(*c*) Neglect to give a chained dog adequate daily exercise;

(*d*) Conveying poultry of different species together;

(*e*) Administering poison to any animal, or exposing poison with intent that it shall be taken by any animal;

(*f*) Selling or giving away any grain or seed which has been rendered poisonous, except for *bona fide* use in agriculture;

(*g*) Knowingly putting or placing on any land or building any poison or

any fluid or edible matter, not being sown seed or grain, which has been rendered poisonous;

(*h*) Doping racehorses;

(*i*) Shooting pigeons released from traps.

An exception is made in respect of poison intended to destroy rats, mice, or other vermin.

Further exceptions are made in respect of:

(*a*) The slaughtering of any animal, in accordance with the requirements of any religion;

(*b*) The performance in a proper manner of the operations of dehorning, spaying, or castration of cattle and other usual operations;

(*c*) The extermination of rabbits, marsupials, wild or stray dogs or cats, foxes or vermin;

(*d*) The hunting, snaring, trapping, shooting, or capturing of any animal not in a domestic state;

(*e*) Vivisection performed by persons duly authorized by the Governor and in accordance with regulations made by him.

The Act increases the severity of the penalties for cruelty and contains various useful powers, such as the power to slaughter, without the consent of the owner, any animal severely injured, and to deprive a person ill-treating any animal belonging to him of the ownership thereof. There is also power to prevent the working of any animal which is in an unfit condition, and the sale of decrepit animals, except for the purpose of slaughtering, is prohibited. The killing of decrepit animals must be in conformity with strict regulations, which are laid down in the Act.

Magistrates are empowered to appoint any officer or servant of a society for the prevention of cruelty to animals a special constable for the purposes of the Act.

Coroners (No. 24).—This Act consolidates and amends the law relating to coroners.

S. 9 introduces what is a novelty in this State, but has long been in vogue in Victoria, the power to hold an inquest without a jury. This power the coroner may exercise in any case unless the inquest is on the body of a person whose death has been caused by an explosion or accident in or about a mine or factory, or the coroner considers it desirable to have a jury or the Attorney-General directs that the inquest be held before a jury.

Another innovation is the abolition of the practice of viewing the body.

The other amendments effected by the Act are of minor importance.

Navigation (No. 27).—The principal object of this Act is to extend the provisions of the Navigation Act (particularly those relating to courts of marine inquiry) to ships owned by the Crown.

The principal Act exempts all ships of the Crown.

This amendment narrows the exemption to ships belonging to the Navy; and thus makes ships belonging to the State Steamship Service subject to the Act.

Tax Collection (No. 36).—This is an important measure, though a very short one, for it makes the first attempt to amalgamate Commonwealth and State Services which deal with the same subject-matter. There is a Commonwealth and a State income-tax. Hitherto separate returns have been required for each, and the staffs of officers have been quite distinct. This Act provides that it shall be lawful for the State

to enter into an agreement with the Commonwealth for the collection by the Commonwealth, on behalf of the State, of the taxes on income.

Railways Classification Board (No. 38).—The officers of the Government Railways are not subject to the Public Service Act, and the Act No. 14, just reviewed, does not apply to them; so this Act provides them with a Board to classify positions and fix salaries and determine various matters relating to railway employees. The Act applies only to the salaried staff—not to wages men—and takes that staff out of the purview of the Industrial Arbitration Act.

Wheat Marketing (No. 39).—This Act provides for the continuation of the Government Wheat Marketing Scheme in respect of the 1920–21 harvest.

Lunacy (No. 42).—The principal objects of this Act are:

1. To constitute an independent Board of Visitors for every institution for the detention of the insane.

2. To improve the provisions regarding the release of patients, and particularly to vest in Boards of Visitors power to discharge patients whenever they think fit.

3. To give attendants, who have been fined any amount or dismissed, a right of appeal to the Board of Visitors against the decision of the Inspector-General of the Insane.

One and the same Board may be appointed for two or more institutions, and one person may be a member of two or more Boards.

Boards will consist of five members (not Government servants), one of whom will be a legal practitioner, and two medical practitioners, and one of the others will be a woman. Members will be appointed for three years.

Workers' Compensation (No. 43).—This measure alters the maximum amount of annual remuneration a person can receive and still continue a worker from £300 to £400. It further provides for extending the benefits of the Workers' Compensation Act to persons who work in mines on tribute and are really independent contractors.

The maximum compensation payable is increased to £500.

The redemption of weekly payments by a lump-sum settlement may under this Act be ordered on the application of the worker, the principal Act providing for such an order being made on the application of the employer only.

Factories and Shops (No. 44).—This Act consolidates and amends the law relating to the supervision and regulation of factories and shops.

The term "factory" is extended, with certain exceptions, to any premises in which four or more, or, in the case of Asiatics, a lesser number, of persons are engaged in any handicraft or in preparing or manufacturing goods for trade or sale.

Registration of factories has by this Act been made annual in all cases, whereas formerly it was only annual in the case of Asiatics.

The Act retains the prohibition against an Asiatic being registered as an owner or occupier of a factory, unless he carried on the business which he proposes to carry on therein before November 1, 1903.

The employment of Asiatics in factories, unless so employed prior to the date mentioned, is also forbidden as in the repealed Act.

The rules for the regulation of factories are greatly elaborated; and though many of the provisions are carried over from the old Act,

yet the whole tendency of the new measure is to shorten the hours and improve the conditions of the workers in factories, particularly of women and boys.

A male worker is not to be employed for more than 48 hours in any one week, or for more than 8¾ hours in any one day.

A woman or boy is not to be employed—

(*a*) For more than 44 hours in any one week.

(*b*) For more than 8½ hours in any one day.

(*c*) On any holiday or at any time after one o'clock on the day fixed for a half-holiday under the Act.

(*d*) In the case of women, at any time between 6 p.m. and 8 a.m.

(*e*) In the case of boys, at any time between 6 p.m. and 7.45 a.m.

Provision is made for time being allowed for meals, and the periods above-mentioned are reckoned exclusive of meal times.

A somewhat remarkable provision is carried over from the previous Act to the effect that no person of the Chinese or other Asiatic race shall be employed in a factory for longer hours than women may be employed or work in any factory before 8 a.m. or after 5 p.m. on any day.

There is power given to extend the hours mentioned in case of need, but its exercise is circumscribed with strict conditions.

Women and boys are to be allowed seven full holidays on full pay in the year, and one half-holiday every week.

In order to prevent persons employed in factories, shops, or warehouses being underpaid, it is provided in the Act, amongst other things, that every person so employed shall be entitled to receive from the occupier such payment as is agreed on at not longer than fortnightly intervals, and that, notwithstanding any agreement, the amount shall be at least 10*s*. per week for the first year, the minimum being increased by 5*s*. for each additional year until a minimum of 35*s*. is reached.

The provisions to combat the "sweating evil" which occur in the previous Act are here reproduced in an elaborated form.

Part V of the Act contains various restrictions regarding the employment of persons who are not of full age. Thus, children (*i.e.* boys under fourteen or girls under fifteen) may not be employed in a factory at all.

There are further restrictions, such as are not unusual in Factories Acts, relating to employment in mirror or white-lead making, in glass-works, brick and salt making, lucifer-match dipping, and typesetting.

The provisions relating to health, sanitation, and safety contained in Part VI do not call for detailed review, for the precautions insisted on by the various sections do not differ in principle from what the law requires in many other countries.

The Act contains special provisions in reference to the furniture trade. Furniture, whether imported or manufactured in the State, must be stamped. Where the manufacture or preparation of the furniture has been effected solely by European labour, the stamp must set forth in legible type the words "European Labour Only." Where the manufacture or preparation has been effected solely or partly by Asiatic labour, the stamp must bear the words "Asiatic Labour."

The portion of the Act relating to shops reproduces, with amendments, the provisions relating to Early Closing which have been in force for many years in this State. The principal amendment effected is that the late shopping night is entirely abolished in the Metropolitan Area and

the area comprising the Kalgoorlie and adjoining electorates. In other parts of the State the late shopping night is retained, but may be abolished in any district by a vote of the electors.

A further alteration is that the weekly half-holiday is normally to be on Saturday, subject to a certain right of choosing another day which is given to the shopkeepers and to the substitution of Wednesday by a vote of the electors in any district.

A considerable reduction is effected in the hours of employment of shop assistants, for it is provided that, subject to a certain right given to require assistants to work overtime, no shopkeeper shall employ any person for a longer period than 48 hours in any week, or any woman or young person for more than 8¾ hours a day, excepting one day in every week, when the period may be 9½ hours, or for more than 44 hours in any week.

A new provision makes it compulsory to register shops and warehouses.

There are important provisions in the Act which emphasize the fact that the action of Courts of Industrial Arbitration is really legislative rather than judicial. An ordinary Court decides particular cases, whilst Courts of Industrial Arbitration do not decide particular cases, but lay down general rules. In fact, our law provides that awards shall be treated as common rules in the industry affected, and industrial agreements may be made common rules.

It is not to be wondered at, therefore, that the Act under review provides that nothing therein shall in any way affect the jurisdiction of the Court of Arbitration, and that any provisions in the Act relating to matters within the jurisdiction of the Court may be varied, altered, modified, or excluded by any award or by any industrial agreement which has been made a common rule.

Industrial Arbitration (No. 45).—This Act improves the law relating to compulsory conferences in industrial disputes.

Under the principal Act, such conferences could be called only by the President of the Court, but this amending Act provides for the summoning of such conferences by special commissioners, who may be from time to time appointed by the Minister. The Act also provides for the embodiment in industrial agreements of such matters as are settled at any conference, and for the reference of unsettled matters to the Court.

Land (No. 49).—The most important amendment effected by this Act is the fixing of the maximum area of pastoral country that can be held by any one person. S. 5 provides that—

(*a*) No person shall acquire more than 1,000,000 acres of pastoral land within the State ;

(*b*) No person shall be registered as transferee or sub-lessee of any pastoral land if the total area of pastoral land held by such person would thereby exceed 1,000,000 acres ;

(*c*) No person shall become beneficially interested in pastoral land to an extent whereby the aggregate area of pastoral land in which such person is beneficially interested would exceed 1,000,000 acres.

Provision is made for preventing separate stations being worked in such a way as to evade the provisions of the Act, and any person who is a shareholder in a company which holds pastoral property is deemed to be beneficially interested in the property in proportion to his interest in the share capital of the company.

Mining (No. 50).—This amendment of the mining law regulates mining for mineral oil and tribute agreements.

In connection with the former, provision is made that in future Crown grants and leases the rights to mineral oil shall be reserved and the right to search for mineral oil and to do all things necessary for obtaining and disposing of the same is conferred on the Minister for Mines in respect of all vacant Crown land, all lands in which the right to the mineral oil has been reserved, all land comprised in a timber or pastoral lease, and all mining tenements (subject as regards the last to payment of compensation). With regard to other lands the Minister is empowered, subject to s. 4 of the W.A. Constitution Act, 1890 (Imperial), and to payment of compensation, to enter on such lands and search for oil and to conduct all operations necessary for that purpose; but any owner may require the land to be resumed and paid for under the general power of resumption contained in the Act.

The Act enables licences to be granted to prospect for mineral oil and regulates the operations of the licensee. On discovery of payable mineral oil, the licensee is given the right to obtain a mineral-oil reward lease of 640 acres and two ordinary mineral-oil leases of 48 acres each. Subject to these rights of the licensee, the Governor is empowered, on the discovery of mineral oil on any land, to reserve to the Crown and except from occupation all Crown lands within the boundaries of the oil basin as defined by the Government geologist.

Mineral-oil leases are to be subject to special conditions including an obligation on the part of the lessee to refine the oil in the State or in some part of Australia approved by the Minister and not to export any crude oil to any place outside Australia without the like consent.

Leases are not, without the Minister's consent, to be assigned to any company not formed within the Commonwealth, and no licence or lease under the Act is to be granted to any company other than a company formed and incorporated under the law of some part of the King's dominions.

A right of pre-emption is given to the Governor in respect of all oil produced by a lessee from any land held under a mineral-oil lease or by any owner of land alienated from the Crown without reservation of mineral oil.

The part of the Act relating to tribute agreements is of general application, but will in practice principally affect gold-mines.

A tribute agreement is defined as an agreement by a lessee to underlet a mine or portion thereof to a tributer, and a tributer is a person who works a mine or portion thereof subject to the payment to or receipt from the lessee of a portion or percentage of the product taken from the mine, or of the proceeds of the sale of such product.

All tribute agreements have to be registered, and they cannot be registered unless approved by the Warden.

A tribute agreement is not to be for less than six months, and the tributer is entitled to renewal from time to time until the ground is worked out, but so that the total period of the agreement shall not exceed three years and that renewal need not be granted when it is proved that to do so would seriously impair or delay the development of the mine.

Certain conditions are laid down which must be complied with before the Warden can grant registration. Thus, he must not register the agreement if the terms are in his opinion inequitable, or if it does not

provide that no tribute shall be payable unless the tributers engaged in the actual working of the ground have earned per man per week a sum equal to the ruling rate of wages as prescribed for the time being by any current industrial agreement or award in force in the district after paying the costs, charges, and expenses of mining, treatment, and realization.

Power also is given to a Warden to revise the terms of any agreement.

Development work done by the tributer at the request of the lessee must, unless it is provided for in the agreement, be paid for at the current rate of wages. If it is provided for in the agreement, the lessee must pay to the tributer a proportionate part of the cost to be fixed by agreement or determined by the Warden.

Dentists (No. 51).—This Act is an amendment of the Dentists Act, 1894, and alters the qualifications which entitle a person to be registered as a dentist.

Apart from the qualifications which are only available for a limited time, an applicant for registration must satisfy the Dental Board that he possesses one of the qualifications following:

(*a*) That he has for not less than four years continuously practised dentistry in the United Kingdom or in some part of His Majesty's Dominions or in the United States of America, and holds such certificate, diploma, or degree as may be prescribed by the rules, and has passed such examinations (if any) as may, in like manner, be prescribed; or

(*b*) That he holds the Diploma of Dentistry of the Royal College of Surgeons of England, of Ireland, Edinburgh, or Glasgow, or holds a University degree of Dental Surgery, or Dental Science of an Australian University, or holds the diploma of Licentiate of Dental Surgery of the Australian College of Dentistry, and which diploma was granted after the date when such college was affiliated with the University of Melbourne;

(*c*) That he has during a period of not less than four years been continuously engaged in Western Australia as an apprentice to a dentist under registered articles of apprenticeship, and has passed such examinations as may be prescribed by the rules.

Divorce (No. 52).—A reference to vol. iii, part ii, page 83 of this *Journal* will disclose the fact that the Western Australian Parliament passed a measure in 1919 which made divorce by mutual consent not only practicable but easy.

Legislators seem to have been alarmed by the effect of this measure, for in 1920 they passed this amending Act, which provides that no decree *nisi* for dissolution of marriage on the ground of non-compliance with the decree for restitution of conjugal rights shall be granted unless the desertion shall have lasted for three years.

By this Act it is also provided that the duration of desertion entitling the deserted party to a divorce shall be shortened from five to three years.

This measure was reserved for signification of the King's pleasure and has now been assented to.

8. PAPUA.

[*Contributed by the* Hon. Mr. Justice Herbert.]

Ordinances passed—13 (omitting Appropriation and Supply).

Land.—No. 1 of 1920 contains several minor amendments to the existing Land Laws.

German Property.—No. 2 of 1920 prohibits the disposal of property by German nationals or the payment or acceptance of German debts without the approval of the Lieutenant-Governor.

Aliens.—No. 3 of 1920 provides for the revocation of Certificates of Naturalization, and the declaration of alienage of the wife and children of the person whose certificate is revoked.

Census.—No. 9 of 1920 provides for the taking of a Census in 1921 and thereafter decennially, by the Commonwealth Statistician, who may delegate his powers. The Ordinance follows closely the Census law of the Commonwealth, save that it does not provide for collecting economic statistics, and it expressly excludes natives from its application.

Justices.—No. 10 of 1920 amends the law as to venue in summary jurisdiction cases.

Registration (Nationals' Property).—No. 11 of 1920 is intended to secure the registration of property of late enemy nationals for purposes connected with the Treaty of Peace.

Criminal Code.—The Queensland Criminal Code was adopted in British New Guinea in 1902. The Code makes frequent references to jury trials. Trial by jury did not form part of the law of British New Guinea, and only to a limited extent does it exist under the law of Papua. Some of those references in the Code were consequently not applicable in all cases to this Territory. The Ordinance 15 of 1920 removes those inconsistencies. Other amendments of the Code include a provision that on an indictment for the crime of manslaughter (which is not in Papua an offence triable by a jury) the accused may be convicted of doing grievous bodily harm, bodily harm, unlawfully wounding, or common assault, if any such offence is established by the evidence. The Ordinance further amends the Code by providing that the punishment of whipping, when it forms part of any sentence, shall not be inflicted without the consent of the Lieutenant-Governor.

Customs.—Two Ordinances relating to Customs were passed. One (16 of 1920) increases the tariff—mainly on ales, spirits, and tobacco—and imposes *ad valorem* duties on certain articles formerly on the free list.

The other Ordinance (17 of 1920) imposes export duties on copra (25*s.* a ton) and pear-shell, trochus, and burgos-shell (20*s.* a ton).

Postal.—The Post and Telegraph Ordinance, 1920 (No. 19), increases the postal rates payable within the Territory. Its operation commences by proclamation.

9. NEW ZEALAND.

[*Contributed by* J. CHRISTIE, ESQ., LL.M., *Parliamentary Law Draftsman.*]

Acts passed: Public and General—85; Local and Personal—20.

Customs.—The Customs Amendment Act (1920, No. 2) is intended to afford to importers of goods from foreign countries a measure of relief from hardship due to the varying commercial or banking rates of exchange, as distinguished from the "mintage" rates.

S. 121 of the Customs Act, 1913, provides that where an invoice shows the value of goods in any currency other than that in force in New Zealand, the equivalent value in such last-mentioned currency shall be ascertained

according to a "fair rate of exchange." This reference to a fair rate of exchange has been held to be a reference to the "mintage rate" and not to the commercial or banking rate. This construction has resulted in advantage to certain classes of importers (*e.g.* importers from America) and in grave disadvantage to other classes of importers (*e.g.* importers from France and certain other European countries). The amending Act permits the adoption by the Customs Department, for the purpose of assessing Customs duties, either of the mintage rate or of the commercial rate, as in any case the Department thinks fit.

Judicial.—The Judicature Amendment Act (1920, No. 4) increases the rates of salaries payable to judges of the Supreme Court of New Zealand. Under the new scale the Chief Justice receives an annual salary of £2,250, and each of the other judges an annual salary of £2,000.

The Magistrate's Courts Amendment Act (1920, No. 5) increases the rates of salaries payable to Stipendiary Magistrates. The principal magistrates in the four chief centres receive £900 a year; two other magistrates receive £850, and the remainder £800 a year.

Aliens.—The Registration of Aliens Amendment Act (1920, No. 7) extends the provisions of the Registration of Aliens Act, 1917 (*Journal*, Third Series, vol. i., Part II., p. 94) by providing for the registration of:

(1) Women who become aliens by reason of marriage.

(2) Persons whose Letters of Naturalization have been revoked under the Revocation of Naturalization Act, 1917 (*Journal*, Third Series, vol. i., Part II., p. 92).

(3) Alien minors who attain the age of fifteen years.

The Revocation of Naturalization Amendment Act (1920, No. 8) requires persons whose naturalization has been revoked under the Revocation of Naturalization Act, 1917 (*Journal*, Third Series, vol. i., Part II.) to surrender their Letters of Naturalization to an officer of police or other authorized person. Failure to do so is punishable by imprisonment for three months, or a fine of £100.

Gaming.—The Gaming Amendment Act (1920, No. 10) renders unlawful the business of "bookmakers." Every person convicted of carrying on the business of a "bookmaker" is liable on summary conviction to a fine of five hundred pounds or to imprisonment for two years. The term "bookmaker" is defined as "any person who acts or carries on business as a bookmaker or turf commission agent, or who gains or endeavours to gain his livelihood wholly or partly by betting or making wagers, or who in any manner holds himself out, or permits himself to be held out, as a person with whom wagers or bets may be made, or who offers to wager on any particular event or class of events with more than one person; and includes a bookmaker's clerk or agent." The Act specially protects persons who may make a bet with any other person upon a particular event unless it is part of the business or occupation of either of such persons to make bets.

Firearms and Explosives.—The Arms Act, 1920 (No. 14) is designed to make better provision for the public safety by regulating the possession of arms, ammunition, and explosives. It repeals the obsolete provisions of the Arms Act, 1908 (which was a re-enactment of the Arms Act, 1880, and has not been in effective operation for many years). In the absence of effective legislation during the war it was found necessary to make elaborate provisions under the War Regulations Acts, governing the possession and use of firearms and explosives. The new Act adopts the pro-

visions of such of the War Regulations as it was deemed advisable to continue permanently in operation. The main provisions are as follows:

(1) Except in the case of returned soldiers or their relatives the possession of automatic pistols or of ammunition specially intended or adapted for use with automatic pistols is absolutely prohibited. In the case of returned soldiers or their relatives the Minister of Defence is empowered to issue a licence authorizing the retention of automatic pistols that may have been brought by returned soldiers from beyond the seas. This exemption was made as a concession to sentiment.

(2) It is made an offence for any person to carry a pistol beyond the limits of his dwelling-house, save pursuant to the terms of a licence issued by an officer of police.

(3) It is made an offence for any person to be in possession of any firearms, ammunition, explosives, or dangerous weapon except for some lawful, proper, and sufficient purpose. The burden of proving the existence of such purpose in any case is upon the accused.

(4) No person other than a licensed dealer is permitted to import into New Zealand any firearms, ammunition, or explosives, save pursuant to a permit issued by an officer of police.

(5) No person other than a licensed dealer is entitled to obtain possession of any firearms, ammunition, or explosives, save pursuant to a permit issued by an officer of police.

(6) The Governor-General is empowered to proclaim areas within which the possession of firearms, ammunition, and explosives is prohibited. On the proclamation of any such area it becomes the duty of all persons therein who may be in possession of firearms or other prohibited articles to deliver the same to an officer of police.

(7) All persons in possession of firearms are required to be registered.

(8) Special provisions are made for licensing dealers in firearms, ammunition, and explosives. On being authorized by the Commissioner of Police, any officer of police may seize and take possession of all firearms, ammunition, and explosives in the possession or under the control of a licensed dealer.

(9) It is made an offence punishable on summary conviction by imprisonment for two months or a fine of £20 for any person to present a firearm, whether loaded or unloaded, except for some lawful and sufficient purpose.

Criminal Appeals.—The Crimes Amendment Act (1920, No. 15) gives to persons convicted of indictable offences a right of appeal to the New Zealand Court of Appeal on the ground that the sentence is excessive, except in cases where the sentence is one fixed by law. On the hearing of any such appeal the Court of Appeal may quash the sentence, and pass any other sentence warranted by law, *whether more or less severe*, or may dismiss the appeal.

Masseurs.—The Masseurs Registration Act (1920, No. 16) makes provision for the registration of masseurs.

Registration may be effected on application to a specially appointed Board consisting of the Director-General of Health, a person engaged in the practice of massage, and a registered medical practitioner. Provision is made for the registration without further examination of persons engaged in the business of massage before the passing of the Act. Other persons applying for registration are required to pass an examination in both theoretical and practical massage, and to have undergone a

course of instruction in anatomy, physiology, and theoretical massage, and also practical massage. It is made an offence for any person, not being a registered masseur, to describe himself as a masseur or massage expert, or to use in connection with his business any words, initials, or abbreviations intended or likely to cause any person to believe that he is a registered masseur.

Taxation.—The Land- and Income-tax (Annual) Act (1920, No. 17) fixes rates of land-tax and income-tax, including special war-tax for the year commencing April 1, 1920. The rates are the same as those fixed for the preceding year by the Act of 1919. The rates of taxation for the year commencing April 1, 1921, were provisionally fixed by a later Act—the Land- and Income-tax Amendment Act (1920, No. 35)—which has since been confirmed by the Finance Act, 1921.

Natives.—The Native Trustee Act (1920, No. 21) makes provision for the appointment of a Native Trustee, and of an Advisory Board to be known as the Native Trust Office Board. All lands and other property held by the Public Trustee on behalf of persons of the native race are transferred to the Native Trustee. In addition to ordinary powers of investment, the Native Trustee is specially empowered to invest moneys in the Native Trustee's Account in advances secured by the mortgage of freehold or leasehold interests in native land. It is specially provided (following on similar provision in the Public Trust Office Act) that any deficiency in the Native Trustee's Account may be met by payments out of the Consolidated Fund without further appropriation.

War Regulations.—The War Regulations Continuance Act (1920, No. 22) continues in operation until there may be specifically revoked certain Regulations made under the authority of the War Regulations Act, 1914. Certain of these regulations are declared to continue in force as if they were Board of Trade Regulations made under the Board of Trade Act, 1919. The last-mentioned Regulations all relate to matters affecting industry or commerce and are within the scope of the powers of the Governor-General to make Board of Trade Regulations. Certain other War Regulations (relating largely to matters affecting enemy property and to graver offences of violence and sedition) are continued in force as War Regulations and are set out in full in the Second Schedule to the Act. All other War Regulations are specifically declared to be revoked and the War Regulations Act of 1914 and its amendments are repealed.

Immigration.—The Immigration Restriction Amendment Act (1920, No. 23) marks an important advance in the policy of the Legislature towards the attainment of its ideal of a " White " New Zealand. Subject to certain exceptions it provides that no person (other than a person of British birth and parentage) shall enter New Zealand unless he is in possession of a permit so to do. The reference to persons of British birth and parentage does not include persons belonging to aboriginal races of any Dominion other than New Zealand, or of any colony or other possession or protectorate. The Governor-General is empowered to exempt from the operation of the Act any specified " nations or peoples." Special provision is made for the issue of temporary permits for persons desirous of coming to New Zealand for purposes of business, pleasure, or health. Application for permits to enter New Zealand for the purpose of taking up permanent residence must be made in the prescribed form addressed to the Minister of Customs and sent by post from the country of origin of the applicant or other country where he has resided for at least one year

prior to the making of the application. Persons who enter New Zealand or who attempt to enter New Zealand without a permit are deemed to be " prohibited immigrants " within the meaning of the Immigration Restriction Act, 1908.

Oaths of Allegiance or Obedience to Law.—Every person entering New Zealand is required, if a British subject, to take the Oath of Allegiance, if not a British subject, to take an oath that he will, while in New Zealand, faithfully observe and obey the laws of New Zealand, and that he will not be concerned in any manner in any act of disloyalty to His Majesty.

Summary Prosecution of Military Offenders.—The Military Service Amendment Act (1920, No. 25) abolishes procedure by way of Court Martial for offences committed against the Military Service Act, 1916, and substitutes proceedings by way of summary prosecution.

Treaties of Peace.—The Treaties of Peace Amendment Act (1920, No. 28) extends by one year the operation of the Treaties of Peace Act, 1919 (enabling the Governor-General in Council to make regulations for the purpose of giving effect to the provisions of the Treaties of Peace with Germany and other belligerent States). By an Act subsequently passed (the Statutes Repeal and Expiring Laws Continuance Act, 1921) the operation of the Treaties of Peace Act, 1919, has been further extended to December 31, 1921.

Loans for Settlement of Discharged Soldiers.—The Discharged Soldiers' Settlement Loans Act (1920, No. 30) authorizes the Minister of Finance to borrow £6,000,000 for the purposes of the Discharged Soldiers' Settlement Acts. Securities to the value of £2,500,000 (portion of the sum so authorized to be borrowed) may be issued subject to the special condition that they are available for the payment of death duties.

Compulsory Subscription to Loans.—The policy of " compulsory subscription to loans " was first adopted in New Zealand with reference to the War Purposes Loan of 1917 (*Journal*, Third Series, vol. i., Part II.) and has been annually applied to subsequent loans. In each case the amount of the standard subscription has been fixed by reference to the land-tax and income-tax paid by the subscriber; the proportion of subscription to tax has been varied, but in other respects the original scheme has not been substantially altered.

If any tax-payer fails to subscribe to the loan to an extent proportionate with his means he may be compelled to subscribe subject to a penalty equal to double the total amount of land-tax and income-tax payable by him for the year commencing on April 1, 1919. The maximum amount that any tax-payer may be called upon to subscribe is an amount equal to the yearly average of land-tax and income-tax payable by him for the three years ended March 31, 1920. Persons aggrieved by a demand to subscribe to the loan have a right of appeal on the ground of undue hardship to a specially constituted Board of public officials.

Civil List.—The Civil List Act (1920, No. 31) repeals the Civil List Act, 1908, and its several amendments, and re-enacts them with substantial amendment.

Provision is made, *inter alia*, for the payment of the salaries of:

(*a*) The Governor-General.
(*b*) Ministers of the Crown.
(*c*) Members of Parliament, and
(*d*) Officers of Parliament.

Election of Legislative Council.—The Legislative Council Amendment

Act (1920, No. 32) further postpones the date for the commencement of the Legislative Council Act, 1914, providing for election in lieu of appointment of Legislative Councillors. The Proclamation issued on December 23, 1919, pursuant to the amending Act of 1918 (*Journal*, Third Series, vol. ii., Part II., p. 95) has been revoked by the present amending Act, and it would appear that the policy of an elective Upper House is not without opponents in the ranks of the political party in power.

Company Law.—The Companies Amendment Act (1920, No. 34) enables companies whose objects are the manufacture of butter and cheese to carry on associated industries (*e.g.* the manufacture of casein and other by-products) without first having effected an alteration of their memoranda or articles of association. Similar legislation was passed (as a temporary measure during the war) in 1916 (*Journal, Review of Legislation for* 1916, p. 157). The temporary revisions are now repealed and the present provisions substituted as a permanent amendment of the Companies Acts.

Apprentices.—The Master and Apprentice Amendment Act (1920, No. 36) relates specially to farm apprentices. Part I applies to indentures of apprenticeship to New Zealand farmer-employers of boys resident in the United Kingdom. Special provisions are made for the execution of such indentures by the High Commissioner in England on behalf of the proposed employers in New Zealand. With respect to such apprentices from the United Kingdom, it is provided that an employer may complain of any breach of duty, disobedience, or ill-behaviour, and, in any such case, the justices hearing the complaint may determine that it is in the best interests of the apprentice that the indenture should be cancelled, and the apprentice sent back to the United Kingdom, and may make an order to that effect accordingly.

The Act specifically recognizes the duty undertaken by the Government of New Zealand to protect and promote the welfare of the boys who may come to New Zealand as farm apprentices under the Act.

Part II makes special provisions with respect to apprenticeship of New Zealand boys as farmers. In the case both of boys from the United Kingdom and of New Zealand boys indentures of farm apprenticeship continue until the apprentice attains the age of twenty years. Indentures under the Principal Act expire at the age of nineteen years.

Offenders' Probation.—The Offenders' Probation Act (1920, No. 39) repeals the First Offenders' Probation Act, 1908, which was a re-enactment of the First Offenders' Probation Act, 1886, and its amendments. The present Act is substantially a re-enactment of the repealed Act, but extends the benefits of the Act to all offenders who, in the opinion of the convicting Court, are fit subjects for probationary treatment (whether first offenders or not). Persons admitted to probation are required to report regularly to specially appointed probation officers. A breach of the conditions of a probationary licence is itself a punishable offence.

Horse-racing.—The Gaming Amendment Act, No. 2 (1920, No. 40), provides for the setting up of a Commission to inquire and report as to whether or not the number of permits annually issued for the use of the totalizator at race-meetings should be increased or reduced.

Death Duties and Gift Duty.—The Death Duties Amendment Act (1920, No. 42) considerably increases the scales of estate duty, succession duty, and gift duty under the Death Duties Act, 1909. In the case of estate duty the rate is graded from 1 per cent. (in the case of estates not exceeding £2,000) to 20 per cent. in the case of estates exceeding £100,000. In the

case of succession duties an additional rate (equal to 10 per cent. of the excess over £1,000 of the value of the succession) is charged in respect of moneys exceeding £1,000 that may be payable to persons domiciled out of New Zealand (not being in any case the wife or husband of the deceased or a relative within the third degree of consanguinity. In the case of Gift Duty the rates are as follows:

(1) 5 per cent. (up to £5,000);
(2) 7½ per cent. (from £5,000 to £10,000); and
(3) 10 per cent. (exceeding £10,000).

A defect in the Act (which does not make provision for the "accumulation" of gifts) permits of the evasion of the higher rates of duty by the subdivision of gifts.

Land.—The Land Laws Amendment Act (1920, No. 43) amends in various particulars the law relating to ordinary Crown Land and Settlement Land (*i.e.* land acquired by the Crown for purposes of closer settlement). The principal modification of the former land policy of the Legislature is in s. 11, which enables a limited area of national endowment land to be excluded from the national endowment and acquired in fee simple by the present holders. The proceeds of sale are to be paid into a special account to be known as the "National Endowment Trust Account," which is to be administered by a special Board and the revenues disposed of in the same way as if they had been derived from national endowment land.

Explosive and Dangerous Goods.—The Explosive and Dangerous Goods Amendment Act (1920, No. 44) makes provision for the safety of life and property with respect to the storage and carriage of petroleum spirit, petroleum oil, and other goods of a like nature. The general administration of the Act is in the hands of a Department of State (whose chief executive officer is the "Chief Inspector of Explosives"), but special provision is made enabling local authorities to make provision by by-laws for the storage and carriage of dangerous goods within their respective districts.

Public Health.—The Health Act (1920, No. 45) repeals the Public Health Act, 1908, and its amendments, and makes comprehensive provision with respect to the maintenance and promotion of public health. The Act establishes an Advisory Board to be known as the Board of Health. It also establishes a Department of Health with the following divisions, viz. the divisions of Public Hygiene, Hospitals, Nursing, School Hygiene, Dental Hygiene, Child Welfare, and Maori Hygiene.

The functions of the Department of Health are:

(*a*) To administer the Health Act and other Acts designed to promote public health.

(*b*) To advise local authorities in relation to their duty of protecting and promoting public health.

(*c*) The prevention, limitation, and suppression of infectious diseases.

(*d*) The carrying out of researches and investigations in matters affecting public health.

(*e*) The organization and control of medical, dental, and nursing services, so far as such services are paid for out of public moneys.

Local authorities (Borough Councils, County Councils, and Town Boards) are specifically charged with the promotion and conservation of public health within their respective districts, and for this purpose are required:

(*a*) To appoint all necessary sanitary inspectors.

(*b*) So far as possible to prevent any nuisance from arising and to take all necessary steps to abate nuisances.

(*c*) Subject to the direction of the Board of Health or the Director-General of Health, to enforce within its district the provisions of the Act and of any Regulations thereunder.

(*d*) To make by-laws for the protection of the public health.

(*e*) From time to time to furnish reports as required to the officers of the Department of Health.

If in any case a local authority (other than a Borough Council) is unable by reason of poverty or other sufficient cause to carry out efficiently the duties imposed by the Act, these duties may be undertaken by officers of the Department of Health, and a portion of the cost may be recovered from the local authority as a debt due to the Crown.

The Board of Health is empowered to require any local authority to provide such sanitary works as, in the opinion of the Board, are necessary for the protection of the public health within the district of the local authority. The term "sanitary works" includes drainage works, sewerage works, waterworks, sanitary conveniences, mortuaries, and disinfecting and cleansing stations. Special provisions are made for the sanitary equipment of dwelling-houses, factories, work-rooms, and business places, and local authorities are empowered to require the alteration, closing, or demolition of buildings that do not conform to the requirements. Extensive powers of making by-laws are conferred on local authorities. Such powers relate, *inter alia*, to the following matters:

(1) Overcrowding of land with buildings.
(2) Sanitation of buildings.
(3) The carrying on of offensive trades.
(4) The keeping of animals.
(5) The cleansing of public conveniences.
(6) The cleansing, ventilation, sanitation, and disinfection of public buildings.
(7) The protection from pollution of food-stuffs.
(8) The collection and disposal of waste matter.

Infectious Diseases.—The Department of Health is specially charged with duties relating to the prevention of the outbreak or spread of infectious diseases. Extensive powers are conferred upon the Medical Officers of Health for the purpose of enabling them to carry out effectively their duties with respect to such diseases. In particular a Medical Officer of Health may take steps to have insanitary buildings pulled down and the timber or other materials thereof destroyed; to cause insanitary things to be destroyed or otherwise disposed of; to cause infected animals to be destroyed; to cause persons, places, buildings, ships, animals, and things to be isolated, quarantined, or disinfected. In special cases (*e.g.* epidemics) he may cause theatres, schools, hospitals, and places of public amusement or resort to be closed and to remain closed until further notice.

Quarantine.—Provision is made for the quarantine of ships, persons, and goods arriving in New Zealand.

Regulations.—Extensive powers are conferred on the Governor-General to make regulations for the purpose of carrying the Act into effect. In particular regulations may be made with respect to:

(1) The inspection and disinfection of ships, buildings, and places.
(2) The vaccination of persons for the prevention of small-pox and other diseases.

(3) The isolation of persons suffering from infectious diseases.

(4) The prevention of the spread of infectious diseases by means of "contacts" or "carriers."

(5) Regulating or restricting the movement of people within or from areas in which any infectious disease may be prevalent.

(6) The destruction of rats and other vermin that may be "carriers" of disease.

(7) The organization of local bodies to assist the Department of Health in the event of the outbreak of an epidemic of infectious disease.

(8) Generally for the purpose of carrying the Act into effect.

Statutes Drafting and Compilation.—The Statutes Drafting and Compilation Act (1920, No. 46) establishes an Office of Parliament to be called the Law Drafting Office, with two Departments, viz.:

(*a*) The Bill Drafting Department, and

(*b*) The Compilation Department.

The need for the establishment of a Compilation Department has arisen from the activity of the Legislature as displayed in a continuous process of amendment (or alteration) of the Statute-law, due in part to changing social conditions.

The duties of the officers of the Bill Drafting Department are:

(*a*) To draft Government Bills and such amendments thereof as may be required by Ministers of the Crown.

(*b*) To supervise the printing of Government Bills and their amendments.

(*c*) To examine and report on all Local Bills.

(*d*) If and when so directed, to examine and report on Bills introduced by private members.

(*e*) Such other duties relating to the drafting of statutes and regulations as the Prime Minister or the Attorney-General may direct.

The duties of the Compilation Department are:

(*a*) As and when directed by the Prime Minister or the Attorney-General to compile statutes and their amendments.

(*b*) To report to the Prime Minister or Attorney-General upon verbal or technical alterations of language which may be adopted for the purposes of compilation.

(*c*) To submit for the consideration of the Prime Minister or the Attorney-General proposals for the alteration of the law, or for the extension, limitation, or amendment of statutes proposed to be compiled.

(*d*) Such other duties relating to the compilation of statutes as the Prime Minister or Attorney-General may direct.

The principal officer of the Bill Drafting Department is called "The Law Draftsman." The principal officer of the Compilation Department is called "The Compiler of Statutes." (*Note:* The Hon. Frederick R. Chapman, who has recently retired from the Bench, after nearly eighteen years' public service as a judge of the Supreme Court, has been appointed as the first Compiler of Statutes. Mr. Chapman's learning and judicial experience, combined with natural gifts, eminently fit him for the position.)

Local Government.—The Counties Act (1920, No. 47) and the Municipal Corporations Act (1920, No. 48) are compilations with extensive amendment in matters of detail of the enactments relating to local government in counties and boroughs respectively. The history of these enactments has been somewhat unusual. As introduced the Bills were compiling measures, with such alterations only as were deemed by the Draftsman

to be necessary for the removal of inconsistencies and for settling matters of doubtful construction. When introduced the Bills were referred to Select Committees of the House of Representatives, which, having heard the evidence of persons interested, made recommendations to the Government for the amendment of the Bills, in respect of their subject-matter. These amendments were prepared by the Draftsman and incorporated in the Bills, which were then passed by the Lower House and transmitted to the Legislative Council. A somewhat similar procedure was adopted in the Legislative Council, and the Bills as finally passed were compilations of the law with extensive material alterations. The procedure adopted is not to be commended. It would have been preferable to have postponed the final passage of both Bills to be dealt with by Parliament in a later Session, after the Draftsman had had an opportunity of reconsidering them in relation to the alterations proposed by the Select Committees. So many new matters were introduced that it was difficult if not impossible in the course of a busy Session to incorporate them in a scientific and workmanlike manner in the framework of the Bills as introduced.

Housing.—The Housing Amendment Act (1920, No. 49) amends the Act of 1919, and also amends the War Legislation Acts relating to the restriction of rents of dwelling-houses (*Review of Legislation for* 1916, p. 155; 1917, pp. 98, 99). The maximum price of a stone, brick, or concrete house is increased from £850 to £1,000 and of other dwellings from £775 to £900. Provision is made for affording assistance by way of advances out of the Housing Account to "Public Utility Societies" whose object may be the establishment or formation of village settlements or garden suburbs or generally the provision of homes for workers.

Restriction of Rents.—The operation of Part I of the War Legislation Amendment Act, 1916, imposing restrictions on the increase of the rent of dwelling-houses is limited to dwellings let before November 9, 1920 (the date of the passing of the present amending Act), and is expressly excluded from all dwellings first let after that date. Special provision is made enabling a landlord to apply to a stipendiary magistrate for authority to increase the rent of dwelling on the ground that the net rental is not at least 7 per cent. of the capital value of the dwelling. For the purposes of this provision the net rental is to be ascertained by deducting from the gross rental all outgoings by way of rates, insurances, repairs, and depreciation. A departure from the previous policy of the Legislature has been made in s. 18 of the amending Act, which provides that rent paid in excess of the standard rent shall be recoverable by the tenant as a debt due by the landlord. It is also made an offence, punishable by a fine of £100, for any person to require or accept a fine, premium, bonus, or other like sum in consideration of the letting of any dwelling-house.

By s. 21 of the Act the provisions of Part I of the War Legislation Amendment Act, 1916, are extended so as to apply to rooms let separately to tenants, as if those rooms were dwelling-houses.

Incorporated Societies.—The Incorporated Societies Amendment Act (1920, No. 50) extends the provisions of the Incorporated Societies Act, 1908 (providing for the incorporation of societies not constituted for purposes of pecuniary gain), by making provision for the incorporation of branch societies and of groups of branch societies. The object of the present extension is to facilitate the holding of property by local societies in their own interests while they maintain membership of a central organization for the furtherance of general interests.

Workers' Compensation.—The Workers' Compensation Amendment Act (1920, No. 52) increases the several amounts payable under the Principal Act in respect of accidents to workers. The general principles of the law as to compensation are not affected.

Freehold Tenure.—The Rotorua Town Lands Act (1920, No. 57) makes provision for enabling Crown tenants in the town of Rotorua to purchase the freehold.

Finance.—The Bank of New Zealand Act (1920, No. 58) transfers £1,250,000 (half the accumulated profits of the Bank of New Zealand) from the Reserve Fund to the Capital Account and increases the State's share of the bank's capital from one-seventh to one-third thereof.

Education.—The Education Amendment Act (1920, No. 64) amends in various particulars the provisions of the Act of 1914. By the amending Act provision is made for extending from fourteen to fifteen years of age the limit for compulsory attendance at a public school or other approved educational institution. The commencement of the section is postponed until a date to be fixed by the Governor-General in Council, being not earlier than January 1, 1922.

Marriage.—The Marriage Amendment Act (1920, No. 65) amends in various particulars the law relating to the celebration of marriages. By s. 2 provision is made for the appointment of women as Registrars or Deputy Registrars of Marriages. S. 3 provides that where any marriage celebrated in New Zealand has been dissolved by divorce, it shall be the duty of the Registrar of the Court from which the decree of divorce issued to furnish particulars of the divorce to the Registrar-General, who shall cause the same to be endorsed on the relevant entry in the Register of Marriages. S. 5 extends from 4 o'clock in the afternoon until 8 o'clock of the evening the time in any day within which marriages may be celebrated.

Provisions of more general interest are contained in s. 7 which declares it to be an offence punishable on summary conviction by a fine of £100 for any person to allege expressly or by implication that any persons lawfully married are not truly and sufficiently married or that the issue of any lawful marriage is illegitimate or born out of true wedlock. The term "allege" is defined to include the making of any verbal statement or the publishing or issuing of any printed or written statement. The mischief at which the section is primarily aimed is a sectarian one, and the section is designed to prevent the teaching that marriages celebrated in accordance with law but not in accordance with the rules of any particular branch of the Christian Church are invalid. The section contains an express saving of existing forms of marriage service.

Divorce.—The Divorce and Matrimonial Causes Amendment Act (1920, No. 70) extends the grounds on which marriages may be dissolved. S. 3 constitutes as a ground of divorce the failure to comply with a decree for the restitution of conjugal rights, thus restoring an earlier provision which was repealed in 1907. S. 4 enables the Court to grant a decree of divorce on petition by either party to a decree of judicial separation or to a separation order, or to a deed of agreement of separation, or separation by mutual consent, if such decree, order, deed, or agreement has been in full force and has so continued for not less than three years.

A change in the law relating to divorce on the ground of insanity is made by s. 5. According to the Principal Act detention in an institution for insane persons was available as a ground of divorce only if such deten-

tion was in an institution in New Zealand. The amending Act authorizes the issue of a decree in cases where the detention has been in such an institution in any part of the British Dominions.

Anzac Day.—The Anzac Day Act (1920, No. 78) declares Anzac Day (the anniversary of the landing of Australian and New Zealand troops in Gallipoli on April 25, 1915) a public holiday " in commemoration of the part taken by New Zealand troops in the Great War and in memory of those who gave their lives for the Empire." The Act further declares Anzac Day to be a Bank Holiday, and provides that on that day no premises shall be open for the sale of intoxicating liquor and no permits shall be granted for the holding of horse-race meetings.

Law Practitioners.—The Law Practitioners Amendment Act (1920, No. 80) makes further concession to solicitors whose studies were interrupted by reason of their military service in the war. The present section repeals former legislation with respect to the same matter (s. 21 of the War Legislation Amendment, 1916) and provides that for the purposes of s. 5 of the Law Practitioners Act, 1908 (providing for the admission of solicitors as barristers, after five years' practice but without further examination) the period of continuous practice shall be deemed, in the case of a solicitor who after having qualified for admission as a solicitor and whether admitted or not has served abroad with any portion of His Majesty's Forces in the late war, to include the period elapsing after his acceptance for service and the expiration of twelve months after his discharge.

Finance.—The Finance Act (1920, No. 83) is divided into the following parts:

Part I. Pensions (including war pensions and civil pensions).
Part II. Public loans.
Part III. Public revenues.
Part IV. Local authorities and public bodies.
Part V. General.

Part I. (Pensions).—The main provision of the present Act with respect to war pensions is that relating to the constitution of a War Pensions Medical Appeal Board to consider appeals based on medical grounds from decisions of the War Pensions Board. With respect to civil pensions (old-age pensions, pensions for miners' phthisis, etc.) temporary increases of the rates made during the war to meet an increased cost of living are now made permanent.

Part II. (Public Loans).—The Minister of Finance is empowered to borrow £6,600,000 for electric power-works and other public purposes. The provisions as to War Loan Certificates first enacted in connection with " War Purposes Loans " have been adopted and made permanent provisions of the New Zealand Loans Act. Authority is given to the Post Office to issue what are called Post Office Investment Certificates on the same terms as the former War Loan Certificates (*Journal, Review of Legislation*, 1916, p. 151).

Part III. (Public Revenues).—S. 20 provides that moneys in the War Expenses Account shall hereafter be expended only in accordance with the appropriation of Parliament. S. 23 empowers the Minister of Finance to guarantee advances made by banks carrying on business in New Zealand to producers of wool, meat, dairy produce, or other primary products. S. 27 enables the Governor-General to impose special rates of duty on the importation into New Zealand of wheat or flour, not exceeding 1*s.* 3*d.*

per bushel of wheat or £2. 10s. per ton of flour. The purpose of the section is to maintain in New Zealand the prices of wheat and flour at a standard sufficient to provide adequate remuneration for persons engaged in their production.

Part IV. (Local Authorities).—S. 33, which has since been repealed and re-enacted in an extended form by s. 11 of the Finance Act, 1921, provided that where a local authority satisfied the Minister of Finance that it was unable to borrow money at the rate of interest authorized by a poll of the rate-payers, that Minister could authorize the borrowing of the moneys at a higher rate, not exceeding a rate to be prescribed by the Governor-General in Council. The corresponding section in the Finance Act, 1921, enables the Minister of Finance not only to increase the rate of interest, but to reduce the term for which debentures may be issued as security, being not less in any case than ten years.

Part V. (General).—Investment of Trust Funds.—S. 46 empowers the Governor-General to approve any savings bank, Borough Council, County Council, or public company as an institution with which trust funds may be invested on deposit. The section is a re-enactment in permanent form of temporary legislation, which was first passed in 1914, and repealed on the termination of the war.

Industrial Insurance.—The Life Insurance Amendment Act (1920, No. 84) prohibits the carrying on of the business of industrial insurance, except on terms and conditions to be approved by the Governor-General in Council. For the purposes of the Act "industrial insurance" means any insurance by the terms of which the premiums are paid or payable at shorter intervals than three months.

Further Financial Provisions.—The Appropriation Act (1920, No. 85) includes several miscellaneous provisions of general interest of which the most important are the following:

Ss. 11 and 12 make provision for the payment of subsidies (amounting in all to £823,000) to manufacturers of butter and cheese for the seasons 1918–21. Similar provision (to an amount of £340,000) was made by the Appropriation Act of 1919. The sections in question have relation to the policy of the Government of fixing prices for certain goods (chiefly primary products) and of paying subsidies to the producers so as to avoid for them a direct personal loss.

S. 13 establishes in the Consolidated Fund an Emergency Expenditure Account, out of which the Minister of Finance is empowered without further appropriation to pay any moneys required in cases of emergency for purposes affecting the public health, public interests, or public safety, or for providing essential supplies such as food-stuffs, coal, and raw materials. The total amount that may be expended in any year under this section is limited to £750,000. No operation on the Emergency Account can be made at any time while Parliament is sitting.

10. FIJI.

[It is hoped to publish the Summary of Legislation in the next Review.]

11. BRITISH SOLOMON ISLANDS PROTECTORATE.

[It is hoped to publish the Summary of Legislation in the next Review.]

12. GILBERT AND ELLICE ISLANDS COLONY.

[*Contributed by* His Honour A. K. Young, K.C.]

During the year 1919 there were nine Ordinances passed, of which the following are the principal:

Interpretation.—No. 2 follows the lines of the Interpretation Ordinance, 1889 (Imperial), defining terms and expressions when used in Ordinances, Regulations, or Rules, etc.

Dogs.—No. 3 regulates the importation of dogs and empowers the High Commissioner to prohibit their importation from certain places.

Former Enemy Aliens.—No. 4 prohibits the landing in the Colony of a former enemy alien, as defined in the Ordinance unless permitted to do so; and provides for the deportation of a former enemy alien who has contravened the provisions of the Ordinance. Certain liabilities are imposed on masters of vessels in respect of former enemy aliens.

Native Lands.—No. 5 constitutes a Native Land Commission for the purpose of ascertaining what lands in the Colony in accordance with native customs and usage are the rightful and hereditary property of native owners. The Ordinance confers upon the Commission all powers necessary for the prosecution of its duties.

Denaturalization.—No. 8 follows the provisions of ss. 7 and 7*a* of the British Nationality and Status of Aliens Act, 1914 (Imperial) as amended by the 1918 Act. The Ordinance also prohibits, with certain reservation, the naturalization of "former enemy aliens" for a period of ten years after the termination of the Great War with Germany and her Allies (*vide* s. 3 (2) of the Imperial Act).

Deportation.—No. 9 provides for the deportation of former enemy aliens in certain cases.

IV. SOUTH AFRICA.

1. UNION OF SOUTH AFRICA.

[*Contributed by* E. L. Matthews, Esq., K.C., C.M.G.]

Acts passed—47.

The session of 1920 was the first session of a new Parliament. A general election had taken place on March 8. Parliament met on the 19th of the same month and, except for a short adjournment at Easter, continued in session until August 17. By that date, when Parliament was prorogued, the order paper was almost clear. Except for the economic legislation with which this review will mainly deal, the 47 measures passed are of little general interest: 12 are appropriation Acts, 10 others deal with matters appertaining to particular localities and were in most cases privately promoted Acts; others merely amend in minor details administrative statutes. Apart from the economic legislation the measure that was of most general interest and importance was the Native Affairs Act (No. 23 of 1920). This Act provides for three different methods of attaining one object—that of ascertaining the sentiments of the native population of the Union in regard to administrative or legislative measures which are likely specially to affect it. Since the passage of the Glen Grey Act

in the Cape Colony some twenty-six years ago there has not been placed before any South African Legislature a Bill of which that has been the sole object. At the National Convention in 1908–9 when the Act of Union was prepared a large number of members of the Convention felt very strongly that the Act should indicate the broad lines of a settlement of native policy. That was, however, at the time impossible. All that could then be done in this matter was: (1) to entrench the existing rights of the natives and coloured people in the Cape Province in respect of their political franchise; (2) to place the control and administration of native affairs throughout the Union in the hands of the Governor-General in Council and exclude the provincial councils and executive committees from any interference in those affairs, a provision which at least ensured uniformity in native policy throughout the Union; (3) to vest in the Governor-General in Council the lands reserved for native locations which have been vested in the pre-Union Colonial Governments and to prohibit the alienation of any of these reserves except under the authority of a special Act of Parliament; (4) to make special provision for the administration of the native territories Basutoland, Swaziland, and the Bechuanaland Protectorate if and when the Imperial Government should permit their administration to be transferred to the Union. After the establishment of Union the first indication of native policy is to be found in the Native Lands Act, 1913. In 1917 a further attempt was made to give expression to the Government's native policy by a Bill which (*a*) purported to define the boundaries of the areas which should be set apart for occupation by natives and non-natives respectively; (*b*) provide for a separate system of administration of native areas, including the establishment of special courts of law and of local advisory councils; (*c*) provided for a permanent Native Affairs Commission modelled on those provisions above referred to and contained in the Act of Union in regard to the administration of the native protectorates if transferred to the Union.

This Bill, however, met with a great deal of opposition from all sides, and unfortunately the native population itself gained the impression that it was not designed in their interests and was evidence of a policy of repression and of a policy which would oust them from their lands. It was clear therefore that the Government would have to retrace its steps and that the first thing to be done was to create machinery by which the opinion and reasonable wishes of the native population would be ascertained. The Act, the provisions of which are now being reviewed, is designed to create this machinery. In the first place a permanent Native Affairs Commission is created for the Union, mainly on the same lines as that contemplated in the Act of Union in regard to the native protectorates of South Africa. The functions of that Commission are to consider any matters relating to the general conduct of the administration of native affairs or to legislation in so far as it *may* affect the native population. If the Commission's recommendations are not accepted by the Minister, it may require its views to be laid before the Governor-General in Council, and if the Governor-General in Council refuses to accept the recommendation, the Commission may have all the papers in regard to the matter submitted to Parliament.

The next part of the Act provides for the establishment of general and local councils for the whole or any part of any native areas which have been or may hereafter be defined by Parliament. Every member

of such a council must be a native, but an European official is to be selected to preside over its meetings and generally to act in an advisory capacity with regard to it. The powers of a local council include matters relating to: the construction of roads, drains, and furrows; an improved water-supply; the suppression of cattle disease; the destruction of noxious weeds; the provision of a suitable system of sanitation; the establishment of hospitals; afforestation and improved methods of agriculture, and the provision of educational facilities. Each council may make by-laws upon these matters, charge fees for services rendered by it, and levy, in the form of a rate, a tax not exceeding one pound annually on each adult male resident in its area of jurisdiction; the Government taxation of the same person being abated to that extent. As it is recognized that some of the powers and functions above described can, with greater advantage, be carried out by a joint body composed of representatives of two or more local councils, provision is made for such a joint body established *ad hoc*. Such a joint body is called a General Council. Each council can only be established on the recommendation of the Native Affairs Commission, and it is the duty of each council to keep that Commission informed of its views and generally advise it on matters upon which it requests advice. It is hoped that these councils will be the means of giving to the natives who are members of it training and experience in local self-government, and thus will be laid a foundation on which can be built larger representative native institutions.

The Act also makes provision for convening at the public expense, on the recommendation of the Commission, conferences of native chiefs, members of local councils, prominent natives, and native delegates of associations which represent the political and economic interests of natives. In this manner it is hoped to ascertain the sentiments of the native population in regard to any proposed legislative or administrative measure which may affect it. Such conferences will be assisted in their deliberations by Europeans—generally officials—designated by the Government.

Economic Legislation.—The Rents Act (No. 13 of 1920). This Act is of an experimental nature in the Union and its operation has therefore been limited to a year. It will expire on June 30, 1921, unless both Houses of Parliament by resolution determine to extend it. The Act was the outcome of the abnormal conditions produced by the war period—conditions which were the subject of investigation by a statutory Commission known as the Cost of Living Commission. Even prior to the war the erection of such dwellings as are inhabited by wage-earners has not kept pace with the demand.

The Act, however, applies in respect of any dwelling the erection of which was completed before April 1, 1920, provided the dwelling is situated in an area for which one of the Rent Boards, which are established by the Act, has been appointed. But dwellings let as fully furnished and dwellings let at a rent which includes payment for board and attendance are excluded from the operation of the Act.

The Boards to be established are empowered to investigate any complaint by a tenant that he is being charged for the dwelling an unreasonable rent. But such a Board has also power to take the initiative and may call upon all or any lessors of dwellings in any part of its area of jurisdiction to send to it returns, verified on oath, as to dwellings let by them in that area, the situation of the dwellings, the names of the lessees, and

the rent paid by each lessee. In the case of a complaint made to it the Board may, after inquiry and if satisfied that an unreasonable rent is being charged to the tenant, order the rent to be reduced and fix a reasonable rent for the future. It may also penalize the lessor or tenant witl costs to a limited amount, according as the complaint was reasonable or vexatious.

When acting on its own intitiative, a Rent Board may, after inquiry, order a reduction of an unreasonable rent to a rent which it fixes as reasonable, and further may order a refund to the tenant of such amount, as is in excess of what it regards as reasonable, of the rent paid since the Act came into operation.

An order of a Rent Board is enforced in a simple manner by being served through the post on the lessor and tenant; its production affords to the tenant a complete defence to any action by the lessor in a court of law for recovery of so much of the rent payable under the lease as is in excess of the amount fixed by the Board as reasonable. An order for a refund of rent paid in excess enables the tenant to obtain a simple process of execution for recovering the excess. Rent is defined as including, in addition to the sum actually payable by the tenant under the lease, any moneys which he actually pays to a local authority by way of assessment rates and sanitary charges. In determining what is a reasonable rent in the case of any particular dwelling, a Rent Board is given a wide discretion and is to have regard to all the circumstances and conditions of the case. But it is also to have regard to the rent paid in respect of the same dwelling or a similar dwelling in the same neighbourhood on July 1, 1914, to the actual amount of any increase or decrease since that date in rates and taxes on the dwelling and the land occupied with it, to improvements, other than necessary repairs, made since that date and any increase since that date, up to 10 per cent., in the cost of executing repairs. In the case of a dwelling erected since July 1, 1914, a rent is never to be regarded as unreasonable if, after deduction of amounts paid for rates and taxes, the lessor obtains as rent not more than 10 per cent. per annum on the actual cost of erection, *plus* not more than 6 per cent. per annum on the actual cost to the owner erecting the dwelling of the land on which it is erected and of the land occupied with it. The Act also includes: (1) a provision which prohibits under criminal penalties the offer, acceptance, or payment of any premiums in consideration of the grant, renewal, or continuance of a lease of a dwelling; (2) a provision whereby courts are precluded from issuing orders of ejectment of a tenant from a dwelling, notwithstanding the expiry of the lease, if he continues to pay regularly a reasonable rent, unless he is doing or has done material damage to the property or is a nuisance to his neighbours, or unless the premises are required by the lessor for his own personal occupation or that of his employees, or unless the court for other special reasons thinks fit to issue such an order.

The Profiteering Act (No. 27 of 1920). This Act is expressed to apply only in respect of such articles or classes of articles as may from time to time be publicly notified. But such articles must be necessary commodities or be materials, machinery, tools, or accessories used in the production of such commodities. The sale of certain articles is excluded absolutely from the operation of the Act, *e.g.*: (*a*) the sale of an article (though a notified article) which is being sold for export from the Union; (*b*) the sale of an article by public auction or competitive tender; (*c*) the sale

by the producer of articles derived from agricultural, stock-rearing, or any farming operations, or by those agents of such producers known as co-operative agricultural societies.

The Act provides for the establishment of a Board of Control consisting of a chairman and four other members. The Board has power: (1) to investigate prices, costs, and profits at all stages and to require information to be given to it in respect thereof; (2) to restrict profits at all stages; (3) to compel manufacturers, importers, and distributors to supply, in accordance with the custom of the trade, articles to traders who are willing to pay and to take the quantities usually supplied; (4) to prohibit, regulate, and restrict the export of articles required for the maintenance of the food supplies; (5) to order that articles shall pass from the producer, manufacturer, or importer to the consumer in as direct channels as possible; (6) to receive or investigate any complaints by a purchaser that an unreasonable profit has been or is being made or sought to be made, and on such investigation to declare the profit which would be reasonable; and, provided the complaint is made immediately, to order the seller to refund the amount which has been paid in excess of what would have been a reasonable profit.

What is or is not an unreasonable profit has been left to the Board of Control to determine in all the circumstances and under all the conditions of each particular case, but the Board is to have regard to certain considerations in connection with pre-war conditions. These considerations are: (*a*) the average *gross* profit earned by the seller or by persons in the same class of business on the sale of the notified or a like article in 1911, 1912, and 1913; (*b*) interest on any increased capital employed by the seller since the commencement of 1915; (*c*) any increase since the commencement of 1915 in the ordinary and reasonable cost incurred by the seller in carrying on his business; (*d*) any increase since the commencement of 1915 in the seller's ordinary and reasonable domestic expenditure consequent on the increased cost of living. It is further provided that where an association of persons engaged in the manufacture or distribution of any notified article submits to the Board of Control a scheme limiting profits and the Board approves the scheme, a profit in connection with the sale of any article to which the scheme relates is not to be deemed unreasonable if it does not exceed the profit allowed under the scheme. The Board is placed in the position of a private prosecutor and has a duty to prosecute for contravention of its orders. The penalties are a fine not exceeding £500; imprisonment without the option of a fine for not exceeding one year; or both such fine and such imprisonment. The Government may assign to local committees in particular areas the powers of investigation and hearing complaints and the power of prosecution possessed by the Board of Control. The Board of Control and the local committees are also endowed with power to subpœna witnesses either to give evidence or to produce documents before it and of placing the witness upon oath. The proceedings of the Board of Control and of the local committees are to be conducted in public except where such proceedings are founded upon a complaint; but these bodies may publish their decisions, findings, and evidence, and such publication is given the same privilege as publication of judicial proceedings, for the purpose of the law of libel. The Act also includes a provision similar to that which is contained in the British Profiteering Act, 1919, as to investigation by the Board of Control of the nature, extent, and development of trusts

and combines which have for their effect the regulation of prices or output of commodities or the regulation of transport rates and services. But, in addition, heavy criminal penalties are imposed in connection with this provision in the Union Act. A person will be guilty of an offence and liable to those penalties when he is associated with the management of a trust or combination or is a party to an agreement if, owing to the operation thereof, the price of a notified article has been unreasonably enhanced or the output of such article has been unduly restricted or if transport rates have been unreasonably enhanced, provided he knew or must have known of such operation or agreement.

Like the Rents Act, the Profiteering Act is limited as to the period of operation, and will have to be specially renewed by resolution of Parliament if it is to have effect after June 30, 1921.

The Speculation in Food-stuffs Prevention Act (No. 29 of 1920) requires every dealer and every broker in food-stuffs to be specially licensed as such. The licence is issued subject to conditions as to the manner in which the business is carried on. A dealer is defined as one who deals in food-stuffs for purposes of profit and gain, but from the term is excluded the producer as well as a statutorily registered co-operative society of producers selling food-stuffs produced by the members thereof. A broker is defined as one who in return for a commission or other remuneration effects as an agent a sale of food-stuffs. From this definition are excluded co-operative societies of food-stuff producers, auctioneers, and market masters. The Act prohibits a dealer from carrying on the business of a broker, auctioneer, or market master, and *vice versa*. The reason for this was that it was shown that the greatest amount of speculation which had taken place was in the transactions between dealers and brokers where no food-stuffs actually passed. It was necessary therefore to ascertain whether transactions had been entered into by any person as a principal or an agent. Dealers and brokers are by the Act compelled to keep such books, accounts, and vouchers as will reveal on inspection their transactions in food-stuffs. The Act then goes on to provide that contracts between dealer and dealer, and dealer and broker for the sale or delivery of food-stuffs shall be in writing, and shall specify in detail what is sold, the price of sale, the time of delivery, and the place at which the seller has purchased or will purchase the food-stuffs sold and the place from which he will consign it for delivery to the person who purchases from him. In order to limit paper transactions in food-stuffs it is provided that if a party enters into a contract to sell food-stuffs and at the date due for delivery there is a difference between the contract price and the market price, such party, where the difference is a decrease on the contract price, cannot recover the amount of the difference or any other sum unless at the date of the contract he was in possession of the food-stuffs the subject of the contract, or, owing to the fact that he was a producer or a person under contract to purchase from a producer, he had reasonable expectation of being able to effect delivery on the due date.

The acceptance of payment of money which a seller is not entitled to recover by reason of this provision is made a criminal offence punishable with a very heavy penalty which may include imprisonment without the option of a fine.

The Currency and Banking Act (No. 31 of 1920). Before a summary is given of the provisions of this Act, a short statement of the causes which gave rise to its enactment is desirable. Owing to economic

conditions arising out of the war, the Government in 1917 placed an embargo on the export of gold and gold coin from the Union. This was done under special war legislation. Further, owing to amending legislation in 1918 regulating joint-stock banks all such banks as were carrying on business in the Union largely increased their note circulation. By the end of 1919 the circulation of gold coin by the banks had practically ceased; notes had taken the place of such coin, notwithstanding that they were not legal tender but were merely a promise to pay in gold the amount specified thereon at a specified place. Contemporaneous with this came the premium on gold, which, between the middle of 1919 and the middle of 1920, fluctuated from 47 to 15 per cent. above the standard value of £3. 17*s*. 10½*d*. per ounce. At the same time that the gold premium manifested itself a very considerable disappearance of gold coin from South Africa became noticeable, notwithstanding that the banks were no longer circulating it. This was due to some extent to hoarding in South Africa itself, but it was mainly caused by the drain of gold to the East. The banks endeavoured to replace this leakage by heavy importations, but the cost of this became prohibitive. It was to remedy this state of things that the Act now under review was passed. The scheme embodied in Chapter I of the Act is shortly as follows: All gold in the hands of the banks is to be sent to the Union Treasury, where it will be stored. The Treasury will issue gold certificates in exchange for the gold so sent. These certificates will remain inconvertible until it is possible to get back to the gold standard, and in the meantime bank-notes will become convertible, not into gold, but into gold certificates fully backed by the presence of gold in the Treasury. The gold certificates must not be issued for a sum in excess of the face value of the gold coin received by the Treasury and £3. 17*s*. 10½*d*. per ounce standard for the gold bullion or light coin so presented. Each gold certificate will be legal tender for payment of any amount up to the face value of the certificate and is generally to be regarded for the purposes of the Act as equivalent to gold or gold specie. Eventually the gold certificates will be redeemable in gold specie on demand at the Treasury, but for the time being this right of redemption is suspended and will remain suspended as long as the premium on gold continues to exist: that is to say, as long as the market value of gold in the Union exceeds £3. 17*s*. 10½*d*. per standard ounce. But a time limit is placed upon this provision; for the operation of s. 7 which gives the Government power to suspend the right of redemption of gold certificates, is limited to three years from July 1920. As the gold-certificate scheme is one which will largely assist the banks, it seemed a suitable opportunity to place the South African banking system on a sounder footing. In order to secure an organization of credit by which confidence can be firmly established and maintained under all circumstances and conditions, Chapter II of the Act provides for the establishment of a central banking institution to be known as the South African Reserve Bank. It is not in ordinary course a competitor of the existing banks, but it has the sole right to issue bank-notes: it will centralize the cash reserves of the country, exercise a general control over banking operations by the regulation of rates of discount, and regulate and provide for expansion and contraction of currency in accordance with the demands of the country's business. The Reserve Bank is to be managed by a board of directors of whom three, experienced in banking and finance, are to be nominated by the existing joint-stock banks;

three others are to be nominated by holders of stock of the Reserve Bank, and are to be persons actively engaged in commerce, agricultural, or other industrial pursuit; three others will be Government representatives. The remaining two will be the Governor and Deputy Governor of the Bank and will be appointed by the Government.

The original capital of the Bank is fixed by the Act at £1,000,000 Of this amount the joint-stock banks must subscribe not more than 50 per cent; the public may take up the remainder, and the amount not subscribed by the public is to be subscribed by the Government. Every joint-stock bank must hold Reserve Bank stock to a nominal value of not less than 5 per cent. of its own paid-up capital. The stock-holders receive cumulative dividends, which are limited to 6 per cent. for so long as the export of gold is restricted. Any profits in excess of 6 per cent. is to be placed to a special fund for strengthening the gold reserve. If the profits exceed 6 per cent. they are to be distributed between the reserve, the Government, and the stock-holders; but in no case can the stock-holders receive more than 10 per cent. on their holdings.

The Reserve Bank is given the sole right to issue notes, and its notes replace the existing note issues of the joint-stock banks in two years from the coming into operation of the Act. The Reserve Bank may establish branches or approved agents in any part of the Union and, with the consent of the Treasury, outside the Union also. It may act as bankers for the Government, the provincial administration, and the railway administration. The Reserve Bank will have general control over credit by encouraging or discouraging borrowing, according to the character of the country's business at the time. In times of stress it may assist the joint-stock banks by rediscounting their bills of exchange or by placing additional currency at their disposal. It also holds the cash reserves of the joint-stock banks. The Reserve Bank is also limited as to the securities in which it may deal, those securities being for the most part short-dated paper. The bank is prohibited from lending money on mortgage or fixed property or on notarial or other bonds. It may not own fixed property except for the purpose of its business premises. One effect of the Act will be an increase in the metallic reserve, because all notes issued by the Reserve Bank are fully secured by not less than 40 per cent. in gold and by 60 per cent. in good commercial bills. The bank's notes will be a charge on its assets.

The Housing Act (No. 35 of 1920). This Act provides for financial assistance from public funds for the construction of dwellings and confers further powers on local authorities in respect of such construction.

The assistance is to be given by the Central Government to the four provincial administrations by loans of money appropriated by Parliament. Discretion is vested in the Treasury to fix the rate of interest payable. Each provincial administration may establish a housing loans fund, the details of management of which is regulated by the Treasury. When any province has established a housing loans fund, the provincial administration may advance moneys to local authorities at a rate of interest not greater than the Treasury fixes in respect of money lent by it to the fund. Such advances are repayable together with the interest thereon, within fifty years. All the revenues and assets of the local authority become security for such repayment, and special methods of recovery are provided for calling up any advance if it is not properly applied or if progress is not made with any housing scheme instituted by the local authority.

These special methods include the appointment of a receiver and the levying of special rates. Out of any advance which a local authority receives from a provincial administration it may either itself construct dwellings or carry out housing schemes, provided in each case the type of dwelling or the particular scheme has been approved by the administration. The local authority is authorized to sell or let dwellings erected by it on conditions prescribed by the administration. The local authority can only erect dwellings or carry out schemes within its own area of jurisdiction. A local authority may also, out of the advances it receives from a provincial administration or out of any moneys which it may raise under its ordinary borrowing power, grant loans to any non-profit-making society (*e.g.* garden city associations) or to any individual who satisfies the local authority that he intends personally to occupy the dwelling for the erection of which the loan is to be granted.

It is a condition of every loan to an individual that he will not sell the dwelling within five years after the date of the loan, even if he has paid it off, unless he gives the local authority an option to purchase, at a price to be fixed by arbitration in default of agreement.

A housing loan to a society is repayable within forty years and a loan to an individual within twenty years. The loan is secured by first mortgage over the land on which the dwelling is to be erected or on which the housing scheme is situate. The rate of interest on the loan is not to exceed the rate which the local authority itself pays for the money. The local authority also is endowed with special powers for recovering principal and interest in the event of default or in the event of the loan not being properly expended or reasonable progress not being made.

The class of dwelling for the erection of which a loan may be granted under the Act is one which does not contain more than five living-rooms exclusive of the kitchen and usual appurtenances. Before approving a municipal scheme the provincial administration may require the local authority to make reasonable provision for the poorest section of the population including coloured and native people.

The local authorities are granted power to expropriate land within its own areas for the purposes of the Act, subject to certain safeguards as to the necessity for the expropriation and the suitability of the land expropriated. The Government is authorized to make grants of Crown lands to local authorities for the purposes of the Act, and for like purposes a local authority may set apart portions of its own town lands. The Treasury is authorized to advance money to provincial administrations to purchase stocks of building materials and fittings which may be allocated to local authorities in substitution for any part of an advance.

In order as far as possible to mobilize labour and materials, the Government is empowered to prohibit the construction of works and buildings other than dwellings, where it is of opinion that such construction is of less public importance than that of dwellings, and that the construction of dwellings is, owing to the deficiency of labour and materials, likely to be delayed.

Existing dwellings may not be demolished without permission of the local authority if they can be made reasonably fit for habitation. The export of building materials from the Union may be prohibited except under the Government's express authority.

Provision is made for the appointment of a central Housing Board of five persons to advise and assist in the carrying out of the Act and in the

preparation of housing schemes and proposals for the erection of dwellings, the intention being to co-ordinate as far as possible the efforts of the four provincial administrations in the control which these administrations possess over the local authorities.

Financial Legislation.—The Financial Relations Act, 1913, which regulated and determined the financial relations which are to exist between the Central Government and the four provincial administrations and which conferred certain additional legislative powers on the provincial councils, was by Act No. 6 of 1920 extended for a further year subject to certain modifications introduced in 1917. The operation of the Act of 1913 terminated on March 31, 1917, but was renewed for three years from that date subject to certain minor modifications. The effect of Act 6 of 1920 is to renew the duration of the two further Acts until March 31, 1921.

The Customs and Excise Duties Act (No. 44 of 1920) is to continue with certain modifications the increased customs and excise duties which were first super-imposed in 1915 on the ordinary customs tariff of 1914 and the excise tariff of 1913. These increases were continued year by year. The modifications are in the direction of remission of duties on some necessaries of life. In addition the Government is authorized to allow rebates of customs duties on articles for private consumption when imported by trade commissioners; rebates in respect of air craft; boy-scout uniforms; and acetic and pyroligneous acids used in the manufacture of chemical substances.

The Income-tax Consolidation Act Further Amendment Act (No. 45 of 1920) re-enacts the rates of income-tax and super-tax for the year ending June 30, 1920, subject to further abatement in respect of children.

By Act No. 38 of 1920 certain provisions of the Public Welfare and Moratorium Acts, 1914, 1917, and 1919 have been extended until July 1, 1922. They would otherwise have expired on January 10, 1921, twelve months after the legal date of the termination of the war. Economic conditions necessitated a continuance of some of these provisions, *e.g.* those which enable the prices of food-stuffs to be regulated and those which enable the Government to prohibit or restrict the importation or exportation of goods.

Miscellaneous Legislation.—By Act 12 of 1920 the number of permanent judges of the appellate division was increased from three to five. Up to the time of the passing of this Act the South Africa Act provided that the number of ordinary judges should be three and that two additional judges selected from time to time from the superior courts of first instance should make up the quorum necessary to hear appeal from judgments of three judges. This has proved inconvenient, as it disturbed work of the courts of first instance.

The same Act enables the appellate division to hear appeals from the High Court which had recently been established in the mandated territory of South-West Africa.

By Act 11 of 1920 a marriage between a widower and his deceased wife's sister has been made lawful in the provinces of Natal and Transvaal. The effect of the Act is to assimilate the laws in regard to this particular matter in the various provinces of the Union. In the Cape such a marriage had been possible since 1892 and in the Orange Free State since 1903.

2. CAPE OF GOOD HOPE.

[It is hoped to publish the Summary of Legislation in the next Review.]

3. TRANSVAAL.

[*Contributed by* G. HARTOG, ESQ.]

Passed—11, of which 4 are Appropriation Ordinances.

Public Entertainments.—By Ordinance 1 of 1920 the Administrator or any person duly authorized by him may call upon the proprietor of any place of amusement to submit for inspection any film or picture intended for exhibition, and the Administrator may by notice in writing or by telegram prohibit the exhibition of any film or picture or the performance of any play or other form of entertainment which in his opinion is contrary to good morals or public policy. Penalties are provided, and the Religious Performance Prevention Ordinance (3 of 1913) is repealed.

Local Government.—I. *Housing.* By Ordinance 4 of 1920, s. 87 of the Local Government Ordinance 9 of 1912 (the principal law) is amended by the addition of a new subsection (15) empowering municipalities— subject to the approval of the Administrator and to any conditions which may be laid down by him (anything to the contrary in any law relating to Townships notwithstanding)—

(*a*) To lay out building plots or otherwise subdivide any municipal land for the purpose of housing schemes for residents.

(*b*) Erect and maintain dwelling-houses thereon.

(*c*) Subject to s. 71 (14 *b*) of the principal law, let, sell, or otherwise dispose of such plots, etc., and the buildings thereon.

(*d*) Acquire land and convert buildings into dwelling-houses, and alter, enlarge, repair, and improve the same.

(*e*) Advance moneys on the security of immovable property to enable residents to acquire land, and / or to erect dwelling-houses, and receive such advances with interest by instalments or otherwise, provided that dwelling-houses to be built by municipalities with borrowed money shall be built by contract after tenders have been invited.

(*f*) Establish, acquire, construct, equip, and carry on, within or without a municipality, brick and tile works.

Local Government Amendments.—II. *Miscellaneous.* By s. 1 of Ordinance 10 of 1920, s. 17 of Ordinance 6 of 1918, exempting from charges meat already certified by the officers of any other municipality as sound, is repealed.

By s. 2 Town Councils may—

(*a*) With the consent of the Administrator acquire any land for disposal to any person for the purpose of there carrying on any offensive work or trade which Councils are empowered to license.

(*b*) Regulate by resolution of any Council all charges for municipal undertakings, or for licences which Councils are entitled to grant.

(*c*) Refuse any licences for a kafir eating-house where in a Council's opinion the number of such exceeds the requirements of any area.

By s. 3 of Ordinance 10 of 1920 s. 3 of Ordinance 12 of 1917 is amended so as to enable Town or Village Councils, subject to the Administrator's

consent as heretofore, to lease municipal land for such periods and on such conditions as they may deem fit.

III. *Memorials on Public Squares.* By Ordinance 11 of 1920 (amending section 87 of the principal law) Town Councils are prevented from erecting or allowing the erection of any memorials or monuments on any square or open space except with the consent of the Executive Committee of the Province ratified by resolution of the Provincial Council.

(Assent of Governor-General in Council hereto not yet announced.)

Taxation.—By Ordinances 7 and 8 of 1920 respectively the Increment Value Duty Ordinance (5 of 1919) and the Dwelling-house and Bachelor-tax Ordinance (16 of 1918) are repealed.

By Ordinance 5 of 1920 a minor amendment is made with regard to the time when returns under s. 5 (1) of the Provincial Gold Profits Tax Ordinance (14 of 1918) are to be rendered.